

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JUDGE CARTER

Sandra Sailsman  
Plaintiff

v.

CACH, LLC

Daniels Norelli Scully & Cecere, P.C. f/k/a

Daniels & Norelli, P.C.

George H. Norelli

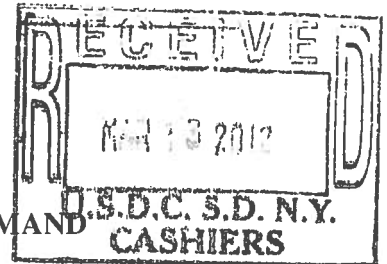
Defendants

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Case No.:

12 CV 1852

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PLAINTIFF'S ORIGINAL COMPLAINT AND JURY DEMAND

Plaintiff, SANDRA SAILSMAN brings suit against Defendants for their violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, (the "FDCPA"), and in support would show as follows.

**A. JURISDICTION AND VENUE**

1. The Court has federal question jurisdiction over the lawsuit because the action arises under the Fair Debt Collection Practices Act, 15 U.S.C. 1692, *et seq.*, (FDCPA). Jurisdiction of the Court arises under 28 U.S.C. § 1331 in that this dispute involves predominant issues of federal law, the FDCPA. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202.
2. Venue in this District is proper because all or a substantial part of the events or omissions giving rise to the claims occurred in Bronx County, New York.
3. Plaintiff is an individual who resides in Bronx County, New York.
4. Defendant CACH, LLC is a limited liability company organized and existing under the laws of the State of Colorado. Said Defendant engages in business in New York, and this suit arose out of said Defendant's business in New York. CACH, LLC, may be served by and through its New

York registered agent C T Corporation System, 111 Eighth Avenue, New York, New York, 10011.

5. Defendant DANIELS NORELLI SCULLY & CECERE, P.C. is a professional corporation organized and existing under the laws of the State of New York, with its principal place of business at One Old Country Road, Suite LL5, Carle Place, New York 11514. It may be served at its principal executive office at One Old Country Road, Suite LL5, Carle Place, New York 11514.

6. Defendant GEORGE H. NORELLI is an individual who, on information and belief, is a resident of the State of New York. Mr. Norelli is a principal owner and operator of the Daniels Norelli Scully & Cecere, P.C. He may be served at his place of business at Daniels Norelli Scully & Cecere, P.C., One Old Country Road, Suite LL5, Carle Place, New York 11514, or wherever he may be found.

#### **B. STATEMENT OF FACTS**

7. Defendant DANIELS NORELLI SCULLY & CECERE, P.C. (the "PC" or "Daniels & Norelli") is a debt collection law firm. The PC is a debt collector because it sends thousands of collection letters and files thousands of collection lawsuits as attorneys for putative creditors and debt buyers seeking to collect alleged consumer debts.

8. Defendants George H. Norelli ("Norelli"), an attorney, is a principal owner and operator of the PC.

9. Defendant CACH, LLC ("CACH") purchases hundreds of thousands of charged off consumer accounts and attempts to collect on them by sending thousands of collection letters and filing thousands of collections lawsuits, directly or through others. CACH is also a debt collector.

10. On or about January 7, 2011, CACH, through its law firm and agent PC, filed a state court collections lawsuit in Bronx County Civil Court, CACH, LLC v. Sandra Sailsman, No. CV-002235-11/BX (“the collection lawsuit”). In its verified complaint CACH averred that “there is presently an unpaid balance due and owing . . . the sum of \$1,916.47 with interest from 7/21/2009, . . . together with reasonable attorney’s fees.” The verification was signed by Joshua Bronstein, Esq., an attorney with the PC.

11. Defendants demanded in the summons judgment “for the sum of \$1,916.47 with interest thereon from 7/21/2009, together with costs of this action.” The same demand was made in the “WHEREFORE” clause of the verified complaint.<sup>1</sup> See Exhibit A. The summons and the verified complaint each purport to be signed on 12/6/2010. Post-default interest is limited to 9% under New York state law. As a simple matter of math, \$1,916.47 with 9% interest from 7/21/2009 to yields a total amount due of \$2,208.04 on 12/6/2010. Costs and disbursements in a New York Civil case is typically about \$125.00.<sup>2</sup>

12. Defendants never served Ms. Sailsman.

13. Defendants mailed a copy of the summons and complaint to Ms. Sailsman with a cover letter dated February 23, 2011. The cover letter stated that the “amount complained” was \$1,916.47. See Exhibit B. The cover letter made no mention of interest, costs and

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<sup>1</sup> Oddly, while the demand for judgment did not seek an award of attorney’s fees, item 4 of the complaint stated “there is presently an unpaid balance due and owing to the Plaintiff in the sum of \$1,916.47 with interest from 7/21/2009 and said defendant(s) is now in default of payment under the terms of said agreement, together with reasonable attorney’s fees.” (emphasis added).

<sup>2</sup> Costs and disbursements for civil cases are \$20.00 for costs by statute, \$45.00 for the index number fee, \$40.00 for a prospective enforcement fee, and some amount for service of process fee, often about \$20.00.

disbursements, or attorney's fees.<sup>3</sup>

14. On or about March 4, 2011, Ms. Sailsman filed a pro se answer. With the answer she filed and served a letter itemizing the payments she made on the account and why this demonstrated that the account had already been paid in full. See Exhibit C.

15. The collection lawsuit was set for a pretrial hearing on April 12, 2011.

16. On or about April 2, 2011, Ms. Sailsman received a collection letter dated March 15, 2011, which had a handwritten notation that it was the "2nd mailing." See Exhibit D.

17. In fact the March 15, 2011 letter was the first mailing of the letter, despite the handwritten notation to the contrary.

18. The March 15, 2011 letter stated that **\$4,039.15** was the "Current Balance Due on or before 3/30/2011,"<sup>4</sup> and purported to give an accounting of prior payments. The letter claimed that the "previous balance" was \$16,039.15.

19. The amount claimed to be due in the March 15, 2011 collection letter was \$2,122.68 greater than the \$1,916.47 Defendants claimed was the "amount complained of" in its cover letter of February 23, 2011.

20. The amount claimed to be due in the March 15, 2011 collection letter was \$1,831.11 greater than the principal and interest the summons claimed to be due.

21. Defendants used the March 15, 2011 letter to attempt to dupe Ms. Sailsman to signing

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<sup>3</sup> Communications more than one year from the filing of this complaint which may be time barred under the one year FDCPA statute of limitations are still relevant because they demonstrate how communications made within statute of limitations are misleading.

<sup>4</sup> Oddly, in three places the letter states that the amount due is \$4,039.15, but one place it states the balance due is \$4,039.00.

that she “agreed” that this was the correct amount due and that she would pay that full amount by 3/30/2011. Specifically, the letter stated, that, by signing the agreement to pay, “you will also acknowledge your liability for this obligation and the accuracy of the information contained in this letter.”

22. The March 15, 2011 letter purported to come from and be signed personally by a named partner of the PC, George H. Norelli, Esq. (“Norelli”).

23. By contending that Mr. Norelli signed the letter personally, Defendants were representing to Ms. Sailsman that Mr. Norelli had done an individualized assessment of the facts and circumstances of the claims against Ms. Sailsman.

24. If Mr. Norelli did not in fact review the facts and circumstances around Ms. Sailsman putative account, Defendants were misrepresenting the level of attorney review in the collection letter.

25. Alternatively, if Mr. Norelli did review the specifics of Ms. Sailsman’s putative account, then Defendants were making a knowing misrepresentation of the amount due, in relation to the amount Defendants claimed to be due in the summons and complaint, the February 23, 2012 cover letter, and, as we shall see, in subsequent verified court filings.

26. Ms. Sailsman was stunned and confused by Defendants’ (mis)representations of the claimed to be due. Ms. Sailsman felt overwhelmed by the fact that this law firm that just sued her for \$1,916.47 was stating now by letter the “previous balance” was \$16,039.15, and that she currently owed \$4,039.15.

27. On or about April 3, 2011, Ms. Sailsman spoke with a debt collector from the PC. Ms.

Sailsman questioned the collector about the letter dated March 15, 2011, because she was confused about the breakdown of charges, and also by the notation that this letter was the second mailing as she never received the first.

28. The debt collector did not explain how Daniels & Norelli arrived at the alleged balance due but argued with Ms. Sailsman and spoke to her in a very condescending and argumentative manner. Ms. Sailsman, feeling upset and very frustrated, stated that any further information that Daniels & Norelli would like to impart to her regarding this debt should be in writing, to which the debt collector replied her office “was not equipped to do that.”

29. Ms. Sailsman followed up about the conversation with the debt collector by handwritten letter dated April 3, 2011, addressed to the PC explaining that she paid the creditor at least \$14,645.00 and that she was “informed” previously that the total debt was \$13,916.47. See Exhibit E. Ms. Sailsman requested that Defendants investigate this discrepancy with GE Money Bank, and that any further communications shall be in writing sent to her home address.

30. Shortly thereafter, Ms. Sailsman received, again, the same March 15, 2011 letter from the PC with a handwritten adhesive notes affixed to the front of the letter. This note acknowledged additional prior payments not reflected in the letter itself, but still contended that the amount due was \$4,039.15.

31. On April 14, 2011, during the first pretrial conference, Civil Court Judge Mitchell J. Danzinger ordered CACH, through its counsel, to serve discovery materials to Ms. Sailsman within 45 days.

32. CACH, through its counsel, served Ms. Sailsman with its first set of interrogatories. The

interrogatories had a certificate of service of April 20, 2011. The cover letter to the interrogatories, also dated April 20, 2011, stated, "Total Amount Sued for: 1,916.47." See Exhibit F. This stated "total amount" is entirely inconsistent with the total amount claimed to be due in the summons, the verified letter, the letter of February 23, 2011, and the letter of March 15, 2011.

33. Although the interrogatory demands contained a certificate of service of April 20, 2011, the postage stamp on the envelope indicated it was not mailed until April 27, 2011. Ms. Sailsman had only 20 days from the date of service to answer the interrogatories. See Exhibit G. The pattern and practice of Defendants is to move to strike a pro se consumer's answer to the complaint and move to enter judgment against the consumer if the consumer does not timely answer discovery demands. Therefore, on information and belief, CACH, through the PC, intentionally backdated the certificate of service date in the interrogatories with the specific intent to confuse Ms. Sailsman and to provide a pretext for CACH to strike Ms. Sailsman's answer and to move for default judgment against her.

34. Ms. Sailsman responded to the discovery demands of CACH and the PC by producing bank statements showing proof of payment totaling \$14,465.00 on the alleged account.

35. On or about May 6, 2011, Ms. Sailsman received the discovery responses from CACH and its counsel, and it partially complied with discovery by providing a few account statements, an alleged copy of an affidavit of sale, and a boilerplate card member agreement dated 2006, a year before the date in which Ms. Sailsman opened a GE Money Bank/Care Credit account.

36. On or about June 14, 2011, CACH filed a motion for summary judgment seeking

\$1,916.47, “together with statutory interest from” July 21, 2009, and statutory costs of the civil court action. See Exhibit H.

37. In support of its motion for summary judgment, CACH provided an affidavit of Mr. Tom Vigil dated May 20, 2011, the “authorized agent and custodian of records” for CACH. Mr. Vigil avers in his affidavit that, “As of the date hereof [May 20, 2011], there is due and owing . . . the amount of \$1,916.47 together with interest at the rate of nine percent (9%) from 7/21/2009 and costs of this action.” In support of his affidavit, Mr. Vigil attached assorted documents including a putative 2006 card member agreement, and six putative credit card statements from February 2009 through July 2009.

38. On or about June 28, 2011, Ms. Sailsman provided a pro se response to CACH’s motion for summary judgment and served it on its counsel. In her opposition, she questioned the authenticity of the bill of sale, raised the issue of hearsay because all documentation relied on and statements made by Mr. Vigil in his affidavit were based on inadmissible hearsay. Ms. Sailsman further challenged whether CACH met its burden of production stating that it did not provide prima facie evidence to support its claims for breach of contract and account stated, partly because the fees enumerated in the card member agreement provided by CACH contradicted the fees actually charged in the statements provided. Lastly, she maintained that genuine issues of fact remain as to the balance CACH sought to recover from Ms. Sailsman.

39. Ms. Sailsman was confused as to the amount that CACH claimed she owed as she received from Defendants numerous conflicting statements as to remaining amount allegedly owed on the GE Money Bank credit card.



40. On or about July 18, 2011, the PC, on behalf of CACH, replied to Ms. Sailsman's opposition to summary judgment reiterating the points it made in its initial motion and alleging no issue of fact for trial.

41. On July 22, 2011, Civil Court Lizbeth Gonzalez heard CACH's motion. Judge Gonzalez indicated that she was going to deny the motion, so CACH withdrew the motion to avoid an adverse ruling.

42. In an especially egregious act, CACH, through the PC, slipped to the judge's law clerk and attempted to have signed an order granting on default its motion for summary judgment. See Exhibit I. The clerk went so far as to stamp Judge Gonzalez's name on the proposed order, however, after Judge Gonzalez indicated she would deny the motion CACH withdrew the motion to avoid an adverse ruling.

43. The court set trial for September 22, 2011.

44. Because it knew it would not and could not prove its claims at trial, CACH filed a second motion, despite knowing it would have lost its first summary judgment motion.

45. On August 2, 2011, CACH filed a second motion for summary judgment because CACH knew it could not prove its claims in the previously set trial. This required Ms. Sailsman again to file a pro se opposition, and again to miss work to go to court so she could attend the hearing on the second motion for summary judgment. See Exhibit J.

46. On August 30, 2011 Judge Ben R. Barbato denied CACH's motion for summary judgment. See Exhibit K.

47. On September 22, 2011, the court called the case for trial. CACH put forth no evidence

that Ms. Sailsman owed the putative debt. Judge Danzinger ordered the collection lawsuit discontinued with prejudice.

48. Ms. Sailsman, like many New Yorkers in these difficult financial times, lives paycheck-to-paycheck. Ms. Sailsman certainly could not afford to hire an attorney to defend herself in the collection lawsuit. Defendants acted with the specific purpose of misleading Ms. Sailsman in an effort to compel her to pay more than the amount that was actually owed on the account.

49. Ms. Sailsman wanted to pay the amount she actually owed. She had gone so far as to liquidate \$11,000 from her retirement savings to pay down the debt. She paid an additional \$1,000 towards the debt from her tax refund. However, Ms. Sailsman did not wish to pay an amount she did not owe. By her accounting, the debt should have been either paid off in full. Ms. Sailsman's desire to actually resolve the debt for the correct amount owed was one reason why Defendants' misrepresentations and inconsistent representations of the amount due caused her so much confusion and distress.

50. Ms. Sailsman was confused, distressed, and overwhelmed when Defendants told her orally and in the March 15, 2011 letters that she owed \$4,039.15, when her own records showed that the debt had been paid. This confusion and distress was magnified by series of contradictory (and therefore deceptive) assertions made by Defendants. The letter of April 20, 2011, stated that the "Total Amount Sued for" was 1,916.47." (Emphasis added). Yet in their motions for summary judgment Defendants stated she not only owed 1,916.47, but also interest at 9% from July 21, 2009 to present, plus costs.

51. Ms. Sailsman just wanted to pay the amount actually owed and be done with it.<sup>5</sup> Ms. Sailsman felt overwhelmed that Defendants were pressuring her to sign the letters dated March 15, 2011, stating that she “agreed” that she really owed \$4,039.15. The letter carried even more weight because it was personally signed by the lawyer that was the head of the law firm. Ms. Sailsman felt powerless and feared what Defendants might do or say in court and how she would defend herself against them, especially since they were also telling her that they really could get more than \$4,000 against her. Certainly, Ms. Sailsman’s fears were borne out when CACH, through the PC, slipped a proposed order to the court’s law clerk granting summary judgment on default when in fact CACH withdrew the motion after the court indicated it would deny the motion.

52. Ms. Sailsman felt the stress, fear, and anxiety mounting each day after she received the letters and calls from the PC, and she suffered these feelings almost every day from that point until the case was dismissed on September 22, 2011. This mounting anxiety made it difficult to sleep and caused headaches. Ms. Sailsman also incurred expenses, including postage and copies, seeking to prevent Defendants from obtaining the more than \$4,000 to which they said they were entitled.

**COUNT # 1: Violations of the federal Fair Debt Collection Practices Act.**

53. Plaintiff repeats and realleges each and every allegation set forth above as if reasserted and realleged herein.

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<sup>5</sup> This is not to suggest that Ms. Sailsman actually owed this debt to CACH, the debt collector who brought the collection lawsuit. Ms. Sailsman only knew that she had \$12,000 in dental work performed, and she paid for that dental work on a GE Money Bank/Care Credit account. CACH never proved in court – either to Ms. Sailsman or to the judges who considered CACH’s two summary judgment motions – that CACH had title to the debt or had fully accounted for the amount they sought collect.

54. The purpose of the FDCPA is “to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.” 15 U.S.C. § 1692(e). See also Hamilton v. United Healthcare of La., Inc., 310 F.3d 385, 392 (5th Cir. 2002) (“Congress, through the FDCPA, has legislatively expressed a strong public policy disfavoring dishonest, abusive, and unfair consumer debt collection practices, and clearly intended the FDCPA to have a broad remedial scope”).

55. Congress designed the FDCPA to be enforced primarily through private parties – such as plaintiff – acting as “private attorneys general.” See S. Rep. No. 382, 95th Con., 1st Sess. 5 (Aug. 2, 1977), (“The committee views this legislation as primarily self-enforcing; consumers who have been subject to debt collection abuses will be enforcing compliance”); and Jacobson v. Healthcare Fin. Servs., 516 F.3d 85, 91 (2d Cir. 2008) (“In this way, the FDCPA enlists the efforts of sophisticated consumers like [plaintiff] as ‘private attorneys general’ to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others.”)

56. Plaintiff is a “consumer” as defined by 15 U.S.C. § 1692a(3) because she was alleged to owe a debt.

57. The obligation alleged by Defendants to be owed by Plaintiff is a “debt” as defined by 15 U.S.C. § 1692a(5) because the putative credit card debt was incurred primarily for family, personal or household purposes.

58. Defendants are each a "debt collector" as defined in 15 U.S.C. § 1692a(6).

59. The PC is a debt collector because it sends thousands of collection letters and files thousands of collection lawsuits as attorneys for creditors and debt buyers seeking to collect alleged consumer debts. Therefore, the PC regularly attempts to collect debts alleged to be to another, and that is its primary purpose.

60. Norelli is a debt collector because he regularly collects debts through the PC. Norelli is principal and partner of PC. Norelli purportedly signed the letters dated March 15, 2011, stating that Ms. Sailsman owed over \$4,000. On information and belief, Norelli made the decisions to take the actions that form the basis of this complaint. On information and belief, Norelli exercised control over the operation and management of the collection activities of the PC.

61. CACH is a debt collector because it purchases defaulted consumer accounts and attempts to collect on them by sending thousands of collection letters and filing thousands of collections lawsuits, directly and through others. Therefore, CACH regularly attempts to collect post-default consumer debts, directly or indirectly, and that is its primary purpose.

62. The actions of Defendants enumerated in the above statement of facts constitute an attempt to collect a debt or were taken in connection with an attempt to collect a debt within the meaning of the FDCPA.

63. Defendants violated the following sections of the FDCPA: 15 U.S.C. §§ 1692d, 1692e, and 1692f. By way of example and not limitation Defendants violated the FDCPA by taking the following actions in an attempt to collect a debt or in connection with an attempt to collect a debt: engaging in conduct the natural consequence of which is to harass, oppress or abuse any

person; using false, deceptive or misleading representations or means; misrepresenting the character, amount or legal status of the debt; misrepresenting the services rendered or compensation which may be received; threatening to take and actually taking an action prohibited by law; communicating or threatening to communicate to any person false credit information; using any false representations or deceptive means; using unfair or unconscionable means; and collecting any amount that is not expressly permitted by law or contract.

64. A prevailing Plaintiff in an FDCPA action is entitled to actual damages, additional statutory damages of up to \$1,000.00, and mandatory attorney's fees and costs, and these are so sought.

**C. JURY DEMAND.**

65. Plaintiff demands a trial by jury.

**D. PRAYER**

66. For these reasons, Plaintiff asks for judgment against Defendants for the following:

- i. The above referenced relief requested;
- ii. Statutory damages of up to \$1,000.00 pursuant to 15 U.S.C. § 1692k;
- iii. Actual damages within the jurisdictional limits of the court;
- iv. Attorney fees and costs;
- v. Prejudgment and post-judgment interest as allowed by law;
- vi. A declaration that Defendants violated the FDCPA as alleged in the complaint;

- vii. General relief;
- viii. All other relief, in law and in equity, both special and general, to which Plaintiff may be justly entitled.

Dated: New York, NY  
March 12, 2012

Respectfully submitted,



By: \_\_\_\_\_  
Ahmad Keshavarz  
ATTORNEY FOR PLAINTIFF  
The Law Office of Ahmad Keshavarz  
16 Court St., 26th Floor  
Brooklyn, NY 11241-1026  
Phone: (718) 522-7900  
Fax: (877) 496-7809  
Email: ahmad@NewYorkConsumerAttorney.com

YISROEL SCHULMAN, ESQ.  
NEW YORK LEGAL ASSISTANCE GROUP  
Randal Jeffrey, Of Counsel  
7 Hanover Square, 18th Floor  
New York, New York 10004  
Phone: (212) 613-5053  
Email: RJeffrey@nylag.org



By: \_\_\_\_\_  
Shanna Tallarico, of Counsel (ST0277)  
ATTORNEY FOR PLAINTIFF  
7 Hanover Square, 18th Floor  
New York, New York 10004  
Phone: (212) 613-5000 ext. 5155  
Email: STallarico@nylag.org

# **EXHIBIT A**



**CONSUMER CREDIT TRANSACTION  
IMPORTANT!! YOU ARE BEING SUED!!  
THIS IS A COURT PAPER - A SUMMONS**

**DON'T THROW IT AWAY!! TALK TO A LAWYER RIGHT AWAY!! PART OF YOUR PAY CAN BE TAKEN FROM YOU (GARNISHEED). IF YOU DO NOT BRING THIS TO COURT, OR SEE A LAWYER, YOUR PROPERTY CAN BE TAKEN AND YOUR CREDIT RATING CAN BE HURT!! YOU MAY HAVE TO PAY OTHER COSTS TOO!! IF YOU CAN'T PAY FOR YOUR OWN LAWYER BRING THESE PAPERS TO THIS COURT RIGHT AWAY. THE CLERK (PERSONAL APPEARANCE) WILL HELP YOU!!**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

Summons

02235-11

1/7/11

CACH, LLC

Plaintiff(s),

-against-

SANDRA SAILSMAN

Defendant(s),

Plaintiff's Address:  
4340 S. MONACO, 2<sup>nd</sup> Flr.  
DENVER, CO 80237

The basis of venue designated is:  
Defendant lives in BRONX County or  
Defendant(s) transaction took place in  
BRONX County

To the above named defendant(s)

**YOU ARE HEREBY SUMMONED** to appear in the **CIVIL COURT OF THE CITY OF NEW YORK, County of BRONX** at the office of the Court Clerk at **CIVIL COURT OF THE CITY OF NEW YORK, 851 GRAND CONCOURSE, BRONX, NY 10451**, in the County of BRONX, City and State of New York, within the time provided by the laws as noted below and to file your answer to the annexed complaint with the Clerk: upon your failure to answer, judgment will be taken against you for the sum of \$1,916.47 with interest thereon from 7/21/2009, together with the costs of this action.

Dated: 12/6/10

Defendant(s) Address: 3015 Perry Ave 3g  
Bronx NY 10458

Note: The law provides that (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within 20 days after such service; or (b) If this summons is served by delivery to any person other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed 30 days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer.

By : Joshua Bronstein, Esq.

DANIELS & NORELLI, P.C., Attorneys for Plaintiff, 1 Old Country Rd, Suite LL5, Carle Place, NY 11514,  
Tel# 866-276-4734.  
120000382643-261-14

WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

Verified Complaint

CACH, LLC

Plaintiff(s),

-against-

SANDRA SAILSMAN

Defendant(s),

Plaintiff, by the undersigned attorneys, complaining of the Defendant(s), alleges as follows, upon information and belief:

1. Plaintiff is a Colorado limited liability company, duly licensed with the City of New York Department of Consumer Affairs license number 1253378. The Plaintiff is the assignee and/or purchaser of all rights and privileges of the credit issuer (to wit, GE MONEY BANK/CARE CREDIT) which issued a credit card to the Defendant(s).

2. That the Defendant(s) resides in the county in which this action is brought; or that the Defendant(s) transacted business within the county in which this action is brought in person or through his/her agent and that the instant cause of action arose out of said transaction.

#### AS AND FOR A FIRST CAUSE OF ACTION

3. At the Defendant(s) request, the original creditor issued a **CREDIT CARD ACCOUNT NOW KNOWN AND NUMBERED AS: 6019183001652676**, to the Defendant(s) under a retail installment credit agreement by which the Defendant(s) agreed to pay for merchandise, loans and installments, and in the event of default, to pay reasonable attorney's fees.

4. The Defendant(s) or authorized members of the family, received cash, merchandise and/or credit on the credit card account and there is presently an unpaid balance due and owing to the Plaintiff in the sum of \$1,916.47 with interest from 7/21/2009 and said defendant(s) is now in default of payment under the terms of said agreement, together with reasonable attorney's fees.

5. Payment of the defaulted balance has been duly demanded and remains unpaid.

6. A copy of the credit card agreement was mailed or delivered to the account holder.

7. That there is now due Plaintiff from Defendant(s) the amount of \$1916.47 no part of which has been paid, although due & duly demanded.

#### AS AND FOR A SECOND CAUSE OF ACTION

8. Plaintiff repeats and re-alleges all of the above allegations.

9. GE MONEY BANK/CARE CREDIT, assignor to Plaintiff herein, did, prior to the transfer of the title, rights and privileges of said account, furnish and deliver to Defendant(s) on or about 7/21/2009, a full, just and true statement of the unpaid balance due from Defendant(s) by use of said account. That the Defendant(s) received, accepted and retained the accounting without rejection or objection being made.

10. By reason thereof, an account was taken and stated between Plaintiff and Defendant(s) which showed the balance on said account due and owing to plaintiff as \$1,916.47 which remains unpaid.

**WHEREFORE**, Plaintiff demands judgment against Defendant(s) for the sum of \$1,916.47 with interest from 7/21/2009 together with costs and disbursements of this action.

Dated: 12/6/10

**DANIELS & NORELLI, P.C.**  
Attorneys for Plaintiff  
1 Old Country Rd, Suite LL5  
Carle Place, NY 11514  
(866)-276-4734

State of New York}  
County of Nassau} s.s:

I, the undersigned, an attorney-at-law, admitted to practice in the Courts of the State of New York, state that I am an attorney in the firm of Daniels & Norelli, P.C., the attorney of record for the Plaintiff in the within action; I have read the foregoing complaint and know the contents to be true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe it to be true. The grounds of my belief as to all matters not stated upon my own knowledge are the records of the Plaintiff, which the Plaintiff has provided to me. I affirm that the foregoing statements are true under the penalties of perjury.

Affiant further says that the reason this verification is made by affiant and not by the said Plaintiff, is because Plaintiff is not located within the County in which the attorney maintains his office.

  
By: Joshua Bronstein, Esq.

**WE ARE ATTEMPTING TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**



# **EXHIBIT B**

**DANIELS & NORELLI, P.C.**  
Attorneys at Law

Fred G. Daniels\*  
George H. Norelli  
James P. Scully\*  
Isaac N. Tuchman  
-----  
Meredith L. Unger  
Joshua R. Bronstein  
Ira. R. Sitzer

1 Old Country Road  
Suite LL5  
Carle Place, NY 11514  
(866) 276-4734  
(516) 338-7520  
(516) 338-1065- Fax

Member of the N.Y. & N.J. Bars

February 23, 2011

**PERSONAL & CONFIDENTIAL**

SANDRA SAILSMAN

3015 Perry Ave 3g  
Bronx, NY 10458

RE: CACH, LLC as assignee of GE MONEY BANK CARE CREDIT -v- SANDRA SAILSMAN  
Original Creditor: GE MONEY BANK  
Index # 02235/11  
Amount Complained: \$1,916.47  
Account # 6019183001652676  
Our Account #: 120000382643

Dear SANDRA SAILSMAN,

I understand that you were recently served with a copy of the within Summons & Complaint in regards to an unpaid GE MONEY BANK/CARE CREDIT credit card account.

Please be advised, you may be able to avoid further proceedings by contacting this office on or before 3/9/2011. Failure to answer the complaint against you or amicably resolve to this matter may result in the entry of a default judgment against you.

I encourage you to contact this office so that we may further discuss available options.

Please govern yourself accordingly.

Very truly yours,  
Daniels & Norelli, P.C.

We are attempting to collect a debt and any information  
obtained will be used for that purpose.

# **EXHIBIT C**

Civil Court of the City of New York  
County of Bronx

Index No: CV-002235-11/BX

CACH, LLC

**ANSWER IN PERSON**

-against-

**CONSUMER CREDIT TRANSACTION**

SANDRA SAILSMAN

Defendant, SANDRA SAILSMAN, at 3015 PERRY AVE 3G, Bronx, NY 10458- , answers the Complaint as

**Dated : 03/04/2011**

(Check all that apply)

1 ☐ General Denial: I deny the allegations in the complaint

**SERVICE**

2 ☐ I did not receive a copy of the summons and complaint

3 ☐ I received the Summons and Complaint, but service was not correct as required by law.

**DEFENSES**

4 ☒ I do not owe this debt

5 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.

6 ☒ I have paid all or part of the alleged debt.

7 ☐ I dispute the amount of the debt.

8 ☐ I do not have a business relationship with Plaintiff. ( Plaintiff lacks standing.)

9 ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.

10 ☐ Plaintiff does not allege a debt collection license number in the Complaint.

11 ☐ Statute of Limitations ( the time has passed to sue on this debt: more than six years.)

12 ☐ The debt has been discharged in bankruptcy.

13 ☐ The collateral (property) was not sold at a commercially reasonable price.

14 ☐ Unjust enrichment (the amount demanded is excessive compared with the original debt.)

15 ☐ Violation of the duty of good faith and fair dealing.

16 ☐ Unconscionability (the contract is unfair.)

17 ☐ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)

18 ☐ Defendant is in the military.

19 ☒ Other: DEBT PAID IN FULL

SEE letter

**OTHER**

20 ☐ Please take notice that my only source of income is \_\_\_\_\_, which is exempt from collection.

**COUNTERCLAIM**

21 ☐ Counterclaim(s): \$ \_\_\_\_\_ Reason: \_\_\_\_\_

**This case is scheduled to appear on the calendar as follows: April 12, 2011 in Part 11C - Non-Jury - Self-Represented - Consumer Debt,**

**Room 504 at 10:30 AM Both sides notified: \_\_\_\_\_**

To:

Daniels & Norelli, PC  
1 Old Country Road, Suite LL5  
Carle Place, NY 11514-

ID - DMV

**FILED**  
CLERK'S OFFICE  
MAR 04 2011  
CIVIL COURT  
BRONX COUNTY

**TO: Civil Court of New York - County of Bronx**  
**851 Grand Concourse**  
**Bronx NY 10451**

**FROM: Sandra L Sailsman**  
**3015 Perry Avenue 3G**  
**Bronx, NY 10458**

RE: Index (libro) No 02335-11,  
 CACH, LLC vs. Sandra L Sailsman  
 CACH Account number: 12000382643  
 RE: G E Money Credit Care Account Number 6019 1830 0165 2676  
 Credit Limit \$12000  
 Amount Complained \$1916.47

I, Sandra L. Sailsman, respectfully submit that these are the monies paid to Care Credit /G. E. Money Bank for the year 2008, 2009 and 2010. I believe that I have fully satisfied any outstanding debt and owe nothing further.


February 19, 2008	\$110	May 19, 2008	\$274	September 16, 2008	\$275
March 17, 2008	140	June 18, 2008	274	October 20, 2008	275
March 19, 2008	140	July 21, 2008	275	November 17, 2008	335
April 16, 2008	272	August 21, 2008	275		
Sub total	\$ 662		\$1098		\$885

**Total Paid in 2008      \$2645**

November 10, 2009	April 30, 2010
\$11,000.00	\$ 1,000.00

**Grand Total Paid \$14,645**

Attached are copies of my bank statements for all of the above with the exception of my December 2008 statement which I cannot locate, and therefore did not include an amount for this month.

  
 Sandra L Sailsman



# EXHIBIT D

**DANIELS & NORELLI, P.C.**  
**Attorneys at Law**

Fred G. Daniels\*  
George H. Norelli  
James P. Scully\*  
Isaac N. Tuchman

-----  
Meredith E. Unger  
Joshua R. Bronstein  
Ira R. Sitzler

*2nd mailing*

One Old Country Rd  
Suite LL5  
Carle Place, NY 11514

(866)276-4734  
(516) 394-8780  
Fax (516) 338-7954

Member of the N.Y. & N.J. Bar\*

March 15, 2011

SANDRA SAILSMAN  
3015 Perry Ave 3g  
Bronx, NY 10458

RE: CACH, LLC as assignee of GE MONEY BANK/CARE CREDIT v. SANDRA SAILSMAN  
Original Creditor: **GE MONEY BANK/CARE CREDIT**  
**Original Account Number: 6019183001652676**  
Our File Number: 120000382643  
Previous Balance: \$ 16,039.15  
Current Balance: \$4,039.15

Dear Sir/Madam:

As per your conversation with this office on March 15, 2011 we have been authorized to receive and accept the amount of **\$4,039.15** as complete payment on the above stated account. We acknowledge your previous payments of \$11,000.00 paid on 12/21/2009 and \$1,000.00 paid on 5/25/2010. The remaining balance of **\$4,039.00** is due in this office on or before **3/30/2011**.

	\$16,039.15 Previous Balance
-	\$11,000.00 paid 12/21/2009
-	\$1,000.00 paid 5/25/2010
	<hr/>
	<b>\$4,039.15 Current Balance Due on or before 3/30/2011</b>

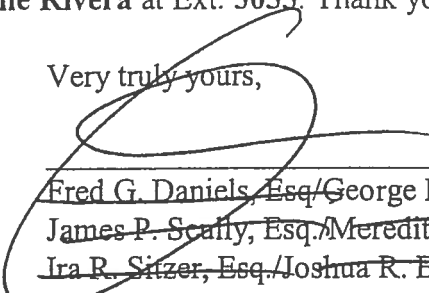
Your payment(s) must be made payable to "Daniels & Norelli, P.C., as attorneys for **CACH, LLC**" and mailed to the above address.

Please take notice, any delay in the issuance of the payment checks past the payoff deadline, may make this entire agreement null and void without further notice; and the total remaining balance together with accruing interest will be due.

To indicate your acceptance of this payment agreement, kindly sign a copy of this letter, and return it to us immediately. By doing so you will also acknowledge your liability for this obligation and the accuracy of the information contained in this letter.

If you have any questions, please contact **Michelle Rivera** at Ext. **3055**. Thank you for your cooperation in this matter.

Very truly yours,

  
\_\_\_\_\_  
~~Fred G. Daniels, Esq./George H. Norelli, Esq.~~  
~~James P. Scully, Esq./Meredith E. Unger, Esq.~~  
~~Ira R. Sitzler, Esq./Joshua R. Bronstein, Esq.~~

Agreed:

\_\_\_\_\_  
SANDRA SAILSMAN

This is an attempt to collect a debt and any information obtained shall be used for that purpose.

# **EXHIBIT E**

SANDRA L SAILSMAN  
3015 PERRY AVE  
APT 3G  
BRONX, NY 10458-1720  
April 3, 2011

MICHELLE RIVERA  
DANIELS & NORELLI, PC  
ATTORNEYS AT LAW  
ONE OLD COUNTRY RD  
SUITE LL5  
CARLE PLACE NY 11514

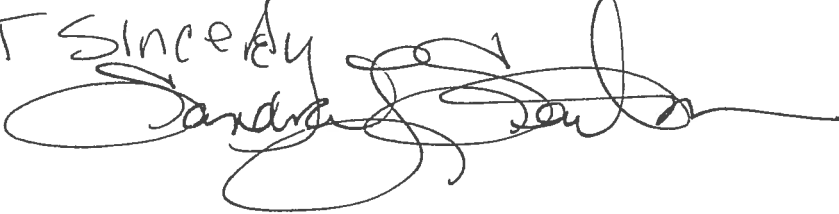
Dear Ms Rivera;  
I have yet to receive the first  
mailing of your letter dated March 15.  
The second mailing was received April 2, 2011

Regarding your file number: 12000038264:  
Creditor G.E. Money  
As of November 10, 2009 the total monies  
paid by me were \$13,645 with a  
subsequent payment of \$1,000 on April  
30, 2010. bringing my total paid to the  
creditor \$14,645. I was informed  
my total debt at the time was  
\$13,916.47.

1042

Please research this further with  
GE Money.

If you require further information  
from me please do so in  
writing to my home address.

Most Sincerely  


# **EXHIBIT F**

**DANIELS & NORELLI, P.C.**  
Attorneys at Law

FRED G. DANIELS\*  
GEORGE H. NORELLI  
JAMES P. SCULLY\*  
ISAAC N. TUCHMAN

-----  
MEREDITH E. UNGER  
JOSHUA R. BRONSTEIN  
IRA R. SITZER

-----  
Also admitted in:  
\* New Jersey

ONE OLD COUNTRY ROAD  
SUITE LL5  
CARLE PLACE, N.Y. 11514

-----  
1-800-332-3306  
1-516-338-7520  
Fax 516-338-6060

April 20, 2011

TO: SANDRA SAILSMAN  
3015 Perry Ave, 3G  
Bronx, NY 10458

Re: CACH, LLC -v- SANDRA SAILSMAN  
Index No.: 02235/11  
Original Creditor: GE MONEY BANK / CARE CREDIT  
Original Account No: 6019183001652676  
Our Account No.: 120000382643  
Total Amount Sued for: \$ 1,916.47

Dear SANDRA SAILSMAN:

Enclosed please find Plaintiff's first set of Interrogatories. If your client would like to settle this matter, please correspond with me within fifteen (15) days.

If you have any questions, do not hesitate to contact the undersigned. Thank you for your attention to this matter.

Very truly yours,

  
Joshua R. Bronstein

/ws  
Encl.

Federal Law Requires Us To Advise You That We Are Attempting To Collect A Debt  
And Any Information Obtained Will Be Used For That Purpose.

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

---

CACH, LLC,

Plaintiff,

INDEX NO.:  
02235/11

-against-

SANDRA SAILSMAN,

PLAINTIFF'S  
FIRST SET OF  
INTERROGATORIES

Defendant(s).

---

The Plaintiff requests that the Defendant(s) answer under oath, and in accordance with CPLR Article 31, the following interrogatories:

1. Did you interpose an answer that includes a general denial of the allegations that were asserted in the complaint? *[If you answer "no" to this interrogatory, skip to interrogatory number 3.]*
2. If yes, what are the facts that you will tell the Court in support of your denials?
3. Does your answer deny your having been served with the summons and complaint and/or does the answer claim that service of the summons and complaint was not correct as required by law? *[If you answer "no" to this interrogatory, skip to interrogatory number 10.]*
4. If you answered yes to interrogatory number 3, on what date and how did you first learn of the existence of this court action?
5. If you answered yes to interrogatory number 3, what was the address where you lived on the date on which the affidavit of service claims you were served?



6. With regard to the address you provide in response to interrogatory number 5, do you have a lease, rent receipts or other papers that documents or proves your residence at that address? If yes, provide a copy of each document.

7. How many copies of the summons and complaint did you ultimately receive?

8. With regard to each copy that you received, on what date was each received; to what address was each copy delivered; and how was each copy delivered?

9. In what way did the service of the summons and complaint not comply with the law?

10. If your answer claims that you do not owe this debt, what are the facts that you will tell the Court to support of this claim?

11. If your answer claims that you did not incur this debt and that you are a victim of identity theft or mistaken identity, did you report the identity theft or mistaken identity to the original creditor, to the police or to any other person or entity? *[If you answer "no" to this interrogatory, skip to interrogatory number 13.]*

12. If your reply to interrogatory 11 is "yes", to whom did you make the report and what was the date of the report? Provide a copy of each report. If the report was not in writing, describe the content of the notice, and identify, by name, address and telephone number, the person who received the notice.

13. Does your answer contain a claim that you paid all or part of the alleged debt? *[If you answer "no" to this interrogatory, skip to interrogatory number 15.]*

14. If you answered "yes" to interrogatory 13, what payments did you make, and on what date was each payment made? Annex a copy of each cancelled check, cash receipt or other document that you intend to show to the Court in order to prove payment.

15. If your answer says that you dispute the amount of the debt, what are the facts that you will tell the Court explaining why you dispute the amount? *[If you answer "no" to this interrogatory, skip to interrogatory number 17.]*

16. What amount, if any, do you acknowledge owing to the plaintiff?

17. Does your answer contain a claim that you have no business relationship with the plaintiff? *[If you answer "no" to this interrogatory, skip to interrogatory number 21.]*

18. If you answered "yes" to interrogatory number 17, what are the facts that you will tell the Court to support your claim?

19. Did you have a business relationship with the company that originated the account with you?

20. What is the name and address of the company that originated the account with you?

21. Does your answer contain a claim that the NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt? *[If you answer "no" to this interrogatory, skip to interrogatory number 24.]*

22. If you answered "yes" to interrogatory number 21, did you communicate with the Department of Consumer Affairs in writing, and did the Department respond to you in writing? If yes, provide a copy of your communication and of the Department's response.

23. Do you have any other documentation proving that the plaintiff does not have a license to collect a debt? If yes, provide a copy of each document.

24. Does your answer contain a claim that the plaintiff did not allege a debt collection license in the complaint? *[If you answer "no" to this interrogatory, skip to interrogatory number 26.]*

25. What are the facts that you will tell the Court in support of your claim that the plaintiff is required to be licensed in order to collect this obligation?

26. Does your answer contain a claim that the statute of limitations bars this action and that the time to sue on this debt has passed? *[If you answer "no" to this interrogatory, skip to interrogatory number 28.]*

27. If you answered "yes" to interrogatory number 26, what was the date on which you failed to pay the obligation, and what was the date and amount of the last payment made by you toward the debt?

28. Does your answer contain the claim that this debt has been discharged in bankruptcy? *[If you answer "no" to this interrogatory, skip to interrogatory number 30.]*

29. If you answered "yes" to interrogatory number 28, what is the case number of your bankruptcy filing; in what Court and District did you file; on what date was the petition filed; and on what date was your discharge granted? Provide a copy of your schedule of creditors and a copy of the discharge order.

30. Does your answer claim that the collateral (property) was not sold at a commercially reasonable price? *[If you answer "no" to this interrogatory, skip to interrogatory number 32.]*

31. If you answered "yes" to interrogatory number 30, what was the retail value and what was the wholesale value of the property on the date of the repossession? Provide a copy of all documents, including condition reports, appraisals, evaluations, that you will submit to the Court to support your claim as to the value of the property.

32. Does your answer allege unjust enrichment (the amount demanded is excessive compared with the original debt)? *[If you answer "no" to this interrogatory, skip to interrogatory number 34.]*

33. If you answered "yes" to interrogatory number 32, what are the facts that you will tell the Court in order to explain this claim? When answering this question, state the amount of the original claim, and the amount of the difference that you believe is excessive.

34. Does your answer contain a claim that the plaintiff has violated the duty of good faith and fair dealing? *[If you answer "no" to this interrogatory, skip to interrogatory number 36.]*

35. If you answered "yes" to interrogatory number 34, what are the facts that you will tell the Court to support your claim of bad faith and unfair dealing?

36. Does your answer contain a claim of unconscionability (the contract is unfair)? *[If you answer "no" to this interrogatory, skip to interrogatory number 38.]*

37. If you answered "yes" to interrogatory number 36, which specific provisions and paragraphs of the contract do you claim are unfair, and what facts will you tell the Court in order to explain the unfairness?

38. Does your answer contain a claim of laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage)? *[If you answer "no" to this interrogatory, skip to interrogatory number 40.]*

39. If you answered "yes" to interrogatory number 38, what is the nature of the disadvantage that you claim?

40. Does your answer contain an allegation that the defendant is in the military? *[If you answer "no" to this interrogatory, skip to interrogatory number 42.]*

41. If you answered "yes" to interrogatory number 40, do you have service records to support this claim? Provide a copy of your orders.

42. Does your answer contain any "other" defenses? *[If you answer "no" to this interrogatory, skip to interrogatory number 44.]*

43. If you answered "yes" to interrogatory number 42, what are the facts that you will tell the Court to support this defense?

44. Does your answer contain a claim that your only source of income is exempt from collection? *[If you answer "no" to this interrogatory, skip to interrogatory number 46.]*

45. If you answered "yes" to interrogatory number 44, what is the source of the income, and what is the nature of the exemption? Provide copies of all awards and payment notices that show the source of the exempt funds.

46. Does your answer contain a counterclaim? *[If you answer "no" to this interrogatory, skip to the signature line.]*

47. If you answered "yes" to interrogatory number 46, what are the facts that you will tell the Court in support of your counterclaim?

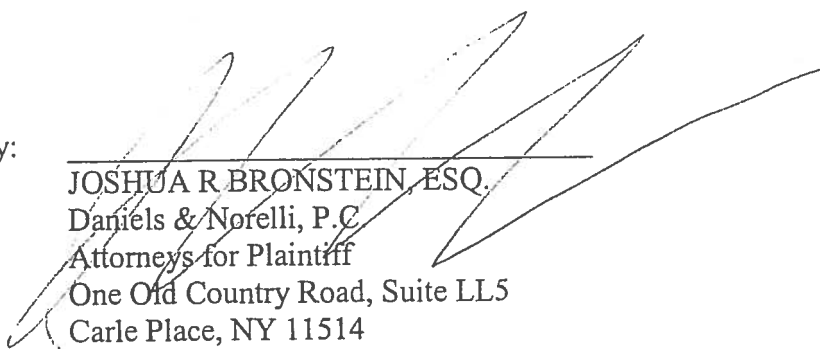
48. If you answered "yes" to interrogatory number 46, how did you calculate the amount demanded by you? Provide copies of all estimates, appraisals and other documents that you show to the Court in support of you counterclaim.

49. In reference to Defendant's Answer, explain why Defendant does not owe the full amount owed, and state how much Defendant admits to owing. Provide any and all supporting documentation, including copies of any payments made on the account.

PLEASE TAKE FURTHER NOTICE that a copy of the answers to these interrogatories must be served upon the undersigned within 20 days of the service of these interrogatories.

Dated: Carle Place, New York  
April 20, 2011

By:



\_\_\_\_\_  
JOSHUA R. BRONSTEIN, ESQ.  
Daniels & Norelli, P.C.  
Attorneys for Plaintiff  
One Old Country Road, Suite LL5  
Carle Place, NY 11514  
516-338-7520

To: SANDRA SAILSMAN  
3015 Perry Ave, 3G  
Bronx, NY 10458

THIS COMMUNICATION IS FROM A DEBT COLLECTOR, AND IS AN ATTEMPT TO COLLECT A DEBT. ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.



# EXHIBIT G

WILLIAM NORRIS, P.C.

100 WALL STREET, SUITE 1000  
NEW YORK, NY 10038-1000  
TEL: 212 410 1000 FAX: 212 410 1001

WILLIAM NORRIS, P.C.

100 WALL STREET, SUITE 1000  
NEW YORK, NY 10038-1000  
TEL: 212 410 1000 FAX: 212 410 1001

SANDRA SAILSMAN  
3015 PERRY AVE, 3G  
BRONX, NY 10458

WILLIAM NORRIS, P.C.

100 WALL STREET, SUITE 1000  
NEW YORK, NY 10038-1000  
TEL: 212 410 1000 FAX: 212 410 1001

2

# **EXHIBIT H**

4  
CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: Part 35C

-----X  
CACH, LLC,

Plaintiff,

-against-

SANDRA SAILSMAN,

Defendant.  
-----X

INDEX NO. 02235/11

**NOTICE OF MOTION TO  
GRANT SUMMARY  
JUDGMENT IN FAVOR OF  
PLAINTIFF**

**PLEASE TAKE NOTICE**, that upon the annexed affidavit of Plaintiff, sworn to on May 20, 2011, and the exhibits annexed thereto; the affirmation dated June 9, 2011 of Ira R. Sitzer, Esq., an associate of the law offices of Daniels & Norelli, P.C., attorneys for the Plaintiff, and the exhibits annexed thereto; the Plaintiff will move at the CIVIL Court of the CITY of NEW YORK, County of BRONX, located at 851 GRAND CONCOURSE, BRONX, NY 10451 on July 22, 2011, at 9:30 a.m., Room 504, Motion Part 35C of this Court, in which appearances are required, for Plaintiff to be heard for an Order pursuant to CPLR § 3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant upon the cause(s) of action set forth in the complaint for the reason that there is no defense or if there was one, it did not have merit.

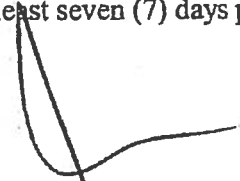
The above-entitled action is for a Contract action. This action is on a trial calendar for 07/06/11. The calendar number is S-11-BX-002353.

**THIS NOTICE IS FROM A DEBT COLLECTOR. THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

With drawn  
lg 7/22/11

**PLEASE TAKE FURTHER NOTICE**, that pursuant to CPLR § 2214(b), answering affidavits, if any, must be served upon the undersigned at least seven (7) days prior to the return date of this motion.

Dated: Carle Place, New York  
June 9, 2011



---

Ira R. Sitzler, Esq.  
Daniels & Norelli, P.C.  
One Old Country Road, #LL5  
Carle Place, NY 11514  
(800) 332-3306

To: SANDRA SAILSMAN  
3015 Perry Ave 3g  
Bronx, NY 10458

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----X  
CACH, LLC,

Plaintiff,

-against-

SANDRA SAILSMAN,

Defendant.  
-----X

INDEX NO. 02235/11

**AFFIRMATION IN  
SUPPORT OF MOTION TO  
GRANT SUMMARY JUDGMENT  
IN FAVOR OF PLAINTIFF**

Ira R. Sitzler, Esq., an attorney duly admitted to the practice of law in the State of New York, hereby affirms the following to be true pursuant to CPLR § 2106 and under the penalties of perjury states that:

1. I am an associate of the law firm of Daniels & Norelli, P.C., attorneys for CACH, LLC (hereinafter the "Plaintiff"), and as such, I am fully familiar with the facts and circumstances herein.
2. I make this affirmation in support of Plaintiff's motion to grant summary judgment in favor of the Plaintiff and against SANDRA SAILSMAN (the "Defendant"), in the amount of \$1,916.47, together with statutory interest from 7/21/2009 and costs of this action.
3. As set forth more fully below and in the accompanying Plaintiff's Affidavit, Defendant opened and maintained the credit card Account with Plaintiff's predecessor, monthly statements were mailed to Defendant, Defendant failed to make the required payments, Plaintiff is now the current owner of the Defendant's account and there is a balance due and owing. As of the date of this affirmation, the debt has not been assigned or sold to another entity. On this basis alone, Plaintiff's Motion for Summary Judgment should be granted as a matter of law.



4. This action was commenced by the purchase of index number 2235 on 01/07/11. Service of the Summons and Verified Complaint was made upon the Defendant on 02/08/11, pursuant to CPLR 308(2). A copy of the Summons, Verified Complaint and Affidavit of Service are annexed hereto as Exhibit "A".

5. The Defendant filed an Answer with the Court on 03/04/11. A copy of the Answer is annexed hereto as Exhibit "B".

**Plaintiff Should Be Granted Summary Judgment**

6. "To obtain summary judgment, it is necessary that the movant establish his cause of action or defend 'sufficiently to warrant the court as a matter of law in directing judgment' in his favor (CPLR 3212[b]), and he must do so by tender of evidentiary proof in admissible form". See Zuckerman v. New York City Transit Auth., 49 N.Y.2d 557, 404 N.E.2d 718, 427 N.Y.2d 595.

7. When the party seeking summary judgment demonstrates entitlement to judgment the burden shifts to the opponent to "rebut that prima facie showing" (Bethlehem Steel Corp. v. Solow, 51 NY2d 870, 872 [1980], by producing "evidentiary proof in admissible form sufficient to require a trial of material questions of fact." (GTF Mktg. V. Colonial Aluminum Sales, 66 NY2d 965, 968 [1985]; Zuckerman v. City of New York, 49 NY2d 557, 562 [1980]). In opposing such a motion, the party must "lay bare" its evidentiary proof. (Silberstein, Awad & Miklos P.C. v. Carson, 304 AD 2d 817, 818 [2d Dept 2003]). Conclusory allegations are insufficient to defeat the motion. (Zuckerman v. City of New York, 49 NY2d at 562).

8. "[t]he absence of an underlying agreement, if established, would not relieve [defendant] of his obligation to pay for goods and services received on credit", Citibank (S.D.) N.A. v. Roberts, 304 A.D.2d 901, 757 N.Y.S.2d 365, see also Great Seneca Fin. Corp. v. Brown, 18 Misc. 3d 140A (Appellate Term, First Dept., 2008).

**Amount claimed is due**

9. Defendant alleges that she does not owe this debt as she paid her debt in full.

Defendant's allegation is vague and unsubstantiated. In order to demonstrate a meritorious defense, a party must make sufficient factual allegations and must do more than merely make conclusory allegations or vague assertions. Peacock -v- Kalikow, 658 NYS 2d 7, see also Mandell -v- Stein, 183 AD 2d 488.

10. Defendant maintained the underlying credit card account for almost two (2) years, in which payments and charges were posted on a revolving basis, and account statements were accepted and retained without objection. Additionally, the account statements annexed hereto were addressed to the Defendant at the same address that Defendant states is her current residence. Subsequently, Defendant defaulted on the account stated. The final account statement dated 07/21/09 indicates the balance in the amount of \$13,916.47 being charged-off. Thereafter Defendant made voluntary payments totaling \$12,000.00, leaving an amount due of \$1,916.47, which is the amount claimed herein. Plaintiff's affidavit and annexed documentation supports the underlying claim. Defendant's defense is without merit.

11. The Defendant's receipt and retention of a Plaintiff's account without objection within a reasonable period of time entitles the Plaintiff to summary judgment on the account. An action for an account stated is not an action by the card issuer to enforce liability for use of the credit card and it is unnecessary for Plaintiff to set forth the subject matter of the original debt to establish its cause of action for an account stated. Citibank (South Dakota), N.A. v. Macarle, 11 Misc. 3d 128A, 815 N.Y.S.2d 493 (App. Term, Second Dept., 2006); see also Morrison Cohen



Singer & Weinstein, LLP v. Waters, 13 A.D.3d 51, 786 NYS 2d 155 (App. Div., First Dept., 2004); Citibank (SD) N.A. v. Reine, 14 Misc. 3d 130A; 836 N.Y.S.2d 484.

12. The receipt and retention of a bill, without objection within a reasonable time, gives rise to an actionable account stated independent of the original obligation, see Fink, Weinberger, Fredman, Berman & Lowell, P. C. v. Petrides, 80 A.D.2d 781, 437 NYS 2d 1 (App. Div. First Dept.).

13. It is well settled that a motion for summary judgment should be granted where, as here, a thorough examination of the merits clearly demonstrates the absence of any genuine or triable issues of fact, and, thus, there is no necessity for a trial. See, e.g., St. Paul Industrial Park, Inc. v. New York State Urban Development Corp., 63 A.D.2d 822, 406 N.Y.S.2d 178 (N.Y. App. Div. 4th Dep't 1978).

14. No previous application for the relief requested herein has been made.

**WHEREFORE**, Plaintiff respectfully requests an Order pursuant to CPLR § 3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant in the amount of \$1,916.47 together with statutory interest at the rate of 9.0% from 7/21/2009 and statutory costs of this action.

Dated: Carle Place, New York  
June 9, 2011

Ira R. Sitzer, Esq.,  
Daniels & Norelli, P.C.  
Attorneys for Plaintiff  
One Old Country Road, #LL5  
Carle Place, NY 11514  
(800) 332-3306

To: SANDRA SAILSMAN  
3015 Perry Ave 3g  
Bronx, NY 10458

**THIS IS AN ATTEMPT TO COLLECT A DEBT AND ANY INFORMATION OBTAINED WILL BE  
USED FOR THAT PURPOSE.**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

INDEX NO. 02235/11

CACH, LLC,

Plaintiff,

-against-

SANDRA SAILSMAN,

Defendant.

**PLAINTIFF'S AFFIDAVIT  
IN SUPPORT OF MOTION  
TO GRANT SUMMARY  
JUDGMENT IN FAVOR OF  
PLAINTIFF**

STATE OF COLORADO ) ss:  
COUNTY OF DENVER )

**TOM VIGIL**

, being duly sworn, deposes and says:

1. I am an authorized agent and custodian of record of CACH, LLC (hereinafter referred to as "Plaintiff"). I make this Affidavit in support of Plaintiff's motion, which seeks summary judgment in favor of the Plaintiff and against SANDRA SAILSMAN (the "Defendant") in the amount of \$1,916.47 together with interest at the rate of nine percent (9%) from 7/21/2009 and costs of this action.

2. As part of my duties for Plaintiff, I am personally familiar with the manner and method by which Plaintiff creates and maintains its books and records, including computer records of credit card accounts such as the credit card account of Defendant. I have personally reviewed Plaintiff's business records relating to the facts stated in this Affidavit concerning Defendant's credit card account.

3. This action was brought by Plaintiff to recover the unpaid balance due and owing by Defendant on a credit card issued by GE MONEY BANK, identified by account number now known by 6019183001652676 (the "Account").

4. Based upon the documentation as provided by the original creditor, pursuant to the express terms of the agreement, the agreement became binding upon the first use of the credit

card and Defendant became responsible for paying the outstanding balance owed on the account. A copy of the terms of the card member agreement is annexed hereto as Exhibit "C".

5. Based upon the documentation as provided by the original creditor, Defendant after having had the use and benefit of the subject credit card account, Defendant breached the Agreement between the parties by failing to make the payments due as required by the Agreement.

6. Based upon the documentation as provided by the original creditor, account statements were mailed to the Defendant advising Defendant of said delinquency and demanding payment. The delinquent statements contained a statement of what was due and owing and it was never challenged. Despite due demand for same, Defendant has failed and continues to fail to make payment. Defendant became responsible for paying outstanding balance owed on the account in accordance with the agreement. Copies of the statements of account, currently in Plaintiff's possession, are annexed hereto as Exhibit "D".

7. Based upon the documentation as provided by the original creditor, credit was extended credit to the Defendant to pay for various goods and services charged to the Account. By valid assignment Plaintiff, CACH, LLC, as the successor in interest, is contractually entitled to collect the amount owed on the Account. A copy of the Assignment is annexed hereto as Exhibit "E". As of the date of this affidavit, the debt has not been assigned or sold to another entity.

8. Based upon the documentation as provided by the original creditor, Defendant never disputed the validity of the balance owed or notified of any recognizable defenses, claims, offsets or counterclaims to the balance due and owing, and, as such, an account stated was created.




9. As of the date hereof, there is due and owing by Defendant to Plaintiff the amount of \$1,916.47 together with interest at the rate of nine percent (9%) from 7/21/2009 and costs of this action.

Sworn to me on \_\_\_\_\_

MAY 20 2011



  
Notary Public



CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----X  
CACH, LLC,

Plaintiff,

Index No.: 02235/11

-against-

**CERTIFICATE OF  
CONFORMITY**

SANDRA SAILSMAN,

Defendant.  
-----X

STATE OF COLORADO    )  
                                  )  
COUNTY OF DENVER    )

ss.:

I, Elizabeth E. Garcia<sup>1</sup>, an attorney and counselor at law of the State of COLORADO, certify that I am fully acquainted with the laws of the State of COLORADO pertaining to the acknowledgment of proofs of deeds of real property; I certify that I am qualified to make this certificate of conformity; and I certify that the acknowledgment or proof on the notarization on the attached document, taken by KATARZYNA KRASZEWSKA<sup>2</sup>, a notary public of the State of COLORADO, on 05/20/11<sup>3</sup>, was taken in the manner prescribed by the laws of the State of COLORADO, and conforms to those laws in all respects.

In witness thereof, I set my hand and affixed my seal on 05/20/11<sup>4</sup>.

  
Signature

<sup>1</sup> Insert the name of the attorney.

<sup>2</sup> Insert the name of the notary.

<sup>3</sup> Insert the date of the notarization.

<sup>4</sup> Insert the date attorney signed.

JANUARY 2012

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COURT: CIVIL COURT OF THE CITY OF NEW YORK COUNTY OF BRONX		INDEX: 02235-11 DATE PURCHASED: 01/07/2011
PLAINTIFF/PETITIONER: CACH, LLC		
DEFENDANT/RESPONDENT(S): SANDRA SAILSMAN		
DOCUMENTS: SUMMONS AND VERIFIED COMPLAINT		

STATE OF NEW YORK NASSAU ss:

WALID MOUSA RAMADAN, the undersigned, being duly sworn, deposes and says:

I am over the age of 18 years, I reside in the state of New York and am not a party to this action.

On 02/08/2011 at 10:00 AM, deponent served the aforementioned documents on SANDRA SAILSMAN at 3016 PERRY AVE 3G, BRONX, NY 10458 in the manner indicated below:

## MANNER OF SERVICE:

By delivering and leaving a true copy or copies of the aforementioned documents with said "JANE DOE", CO-OCCUPANT a person of suitable age and discretion. Person spoken to stated that said premises is intended recipient's residence within the state of New York. On 02/11/2011 deponent deposited in the United States Post Office a true copy or copies of the aforementioned documents properly enclosed and sealed in a post-paid envelope addressed to said Defendant(s) at 3016 PERRY AVE 3G, BRONX, NY 10458. Copy mailed first class mail marked PERSONAL AND CONFIDENTIAL, not indicating on the outside thereof, by return address or otherwise that said notice is from an attorney or concerns an action against the person to be served. Deponent asked the indicated person whether the defendant and/or present occupant was presently in the military service of the United States Government or on active duty in the military service of the State of New York or a deponent or anybody in the military and was told defendant and/or present occupant was not.

## DESCRIPTION OF PERSON SPOKEN TO/PAPERS LEFT WITH:

Sex: Female - Skin: Black - Hair: Black - Age: 41-49 - Height: 5'0"-5'3" - Weight: 150 - 174 lbs  
Other: RECIPIENT REFUSED TO REVEAL NAME

Sworn to and subscribed before me on  
02/11/2011

ANTHONY J. BARONE  
Notary Public, State of New York  
No. 01BA4801103  
Qualified in NASSAU  
Commission Expires 02/28/2014

X  
WALID MOUSA RAMADAN  
License #: 1678369

Atty#: 12000382843-281-14

1000 2012 001  
FEB 14 4 11 PM '11



Civil Court of the City of New York  
County of Bronx

Index No: CV-002235-11/BX

CACH, LLC

-against-

SANDRA SAILSMAN

**ANSWER IN PERSON**  
**CONSUMER CREDIT TRANSACTION**

Defendant, SANDRA SAILSMAN, at 3015 PERRY AVE 3G, Bronx, NY 10458- , answers the Complaint as

Dated : 03/04/2011

(Check all that apply)

1 ☐ General Denial: I deny the allegations in the complaint

**SERVICE**

2 ☐ I did not receive a copy of the summons and complaint

3 ☐ I received the Summons and Complaint, but service was not correct as required by law.

**DEFENSES**

4 ☒ I do not owe this debt

5 ☐ I did not incur this debt. I am the victim of identity theft or mistaken identity.

6 ☒ I have paid all or part of the alleged debt.

7 ☐ I dispute the amount of the debt.

8 ☐ I do not have a business relationship with Plaintiff. ( Plaintiff lacks standing.)

9 ☐ The NYC Department of Consumer Affairs shows no record of plaintiff having a license to collect a debt.

10 ☐ Plaintiff does not allege a debt collection license number in the Complaint.

11 ☐ Statute of Limitations ( the time has passed to sue on this debt: more than six years.)

12 ☐ The debt has been discharged in bankruptcy.

13 ☐ The collateral (property) was not sold at a commercially reasonable price.

14 ☐ Unjust enrichment (the amount demanded is excessive compared with the original debt.)

15 ☐ Violation of the duty of good faith and fair dealing.

16 ☐ Unconscionability (the contract is unfair.)

17 ☐ Laches (plaintiff has excessively delayed in bringing this lawsuit to my disadvantage.)

18 ☐ Defendant is in the military.

19 ☒ Other: DEBT PAID IN FULL

**OTHER**

20 ☐ Please take notice that my only source of income is \_\_\_\_\_, which is exempt from collection.

**COUNTERCLAIM**

21 ☐ Counterclaim(s): \$ \_\_\_\_\_ Reason: \_\_\_\_\_

This case is scheduled to appear on the calendar as follows: April 12, 2011 in Part 11C - Non-Jury - Self-Represented  
- Consumer Debt,

Room 504 at 10:30 AM Both sides notified: \_\_\_\_\_

To:

Daniels & Norelli, PC  
1 Old Country Road, Suite LL5  
Carle Place, NY 11514-

ID - DMV

**FILED**  
CLERK'S OFFICE  
MAR 04 2011  
CIVIL COURT  
BRONX COUNTY



information we share with Others – We may use and share all of the information we collect, subject to applicable law, with the following (these examples are not intended to be all-inclusive):

[illegible]

- **Service Providers and program operators** (including our affiliates) to assist us in servicing Accounts, like property listing subscribers and potential marketes, and responding to customer inquiries. We also may use marketing firms, such as modeling companies, to assist us in our own marketing efforts.

- Financial institutions with whom we jointly offer financial products, such as bank products or credit insurance. If your billing address is in Vermont, this information will be limited to your name and carded, biometric, and transaction and expenditure information on the Account.

- **GENE's affiliates**, who are other companies in the General Electric Company corporate family ("GE's Affiliates") for serving or measuring purposes, subject to your right to opt out of sharing of creditably information, such as certain information from credit bureaus or your application, as provided in the [My Choice](#) section below.

Subject to your right to opt out, GEARS Partners also may use information from us concerning your credit eligibility, and your transactions and experiences with us, to send you marketing communications about products and services.

- **Third Parties, who are interested in offering special products or services to you, such as your bank or opt-out as provided in the 18 to 20** **Choice section below.** For example, we disclose information, either directly or through **Protonix**, its affiliates and program sponsors, as to certain data that we collect about you. We also disclose information related to financial services providers offering products such as insurance mortgages or loans, and non-financial companies offering consumer products and services. We may disclose name, address and telephone numbers, as well as Account numbers and performance history.

- **Others.** We report account information, such as credit limit, delinquency or payment information, to credit bureaus. In addition, we may buy and sell information about our customers' creditworthiness, such as credit ratings, payment history, lines of business and/or accounts. When this occurs, customer information generally is disclosed to lenders and is one of the first pieces of business-related information about you to third parties in the credit industry. We also discuss information about you to third parties in certain other circumstances, as permitted by law.

**It's Your Choice** - You have the right to opt out of our sharing information with certain third parties, as described below, to a certain extent. If you wish to opt out, please call 1-877-945-6391, or write to us at P.O. Box 981438, El Paso, TX 79998-1438. If you have previously informed us of your preference, you do not need to do so again.

If you opt out, you will be directing us as follows:

Do not share information about me with companies other than GEMBA Affiliates, and with Provider and its affiliates or program sponsor(s) (as applicable) for use in connection with this credit program and as otherwise permitted by law. Do not share with GEMBA Affiliates information used to determine eligibility for credit. Do not allow GEMBA Affiliates to solicit for products and services based on transaction, experience, credit, eligibility information they receive from GEMBA.

(11)

### Important Notes About Your Choice

- Please understand that, even if you opt out as described above, we will continue to share information with the Provider and its affiliates and partners to share information (as applicable) associated with this Account, and marketing programs and services provided as described in this policy, and information that we may receive from third parties, including information as otherwise permitted by law. And we will continue to share information with Mercedes-Benz and about your transactions and experiences with us, with GEBCO Atlanta.

- If you have a joint account, a request by one party will apply to all parties on the Account.

- We will process your request promptly. However, it may take us several weeks to ensure that all records are updated with your preferences. In the interim, you will continue to be included in programs as described above. Also, after your request is processed, you may still be contacted by GEAC Affiliates and/or other companies based on their own information.

- Even if you opt out, we will continue to provide you with billing benefits and mail notices of special offers and new benefits.

**Vermont Residents:** If (and when) your billing address is in Vermont, we treat your Account as if you had exercised the opt-out choice described above. If you wish to opt out, you must notify us by mail, as described above and you do not need to contact us in order to opt out. If you move above and you do not need to contact us in order to opt out, you must notify us from Vermont and you wish to restrict us from sharing information away from Vermont and you wish to restrict us from sharing information about you as provided in this Policy, you must then contact us to exercise the opt-out choice described above.

**Our Society Procedures**—We maintain physical, electronic, and printed safeguards that comply with federal standards to guard sensitive persons' information about you. We limit access to personal and account information to those employees and agents who assist in providing products and services to you. We also require third parties to whom we disclose your sensitive personal information to adhere to this Privacy Policy and to consistent information security procedures.

**Your Access to information** - We provide you access to information about your Account by sending you monthly billing statements outlining your terms, fees, financial charges, and other Account information, and by providing customer service representatives to answer your questions.

**How This Policy Applies to You** – The examples contained in this Privacy Policy are illustrative only, and are not intended to be exhaustive. If you choose to close your Account, or become an inactive customer, or if we close your Account, we will continue to adhere to the privacy policies and practices described in this notice to the extent we need information about you to comply with applicable law. You may have other privacy protections or choices that may apply to you. You may have other privacy protections or choices based on where you live and we will comply with applicable laws when we disclose or transfer information about you. This Privacy Policy applies only to this consumer or account with GE Money Bank and does not apply to any other accounts you may have with us, and replaces our previous disclosures to you about information practices.

For account information, visit us at [www.geonlineusa.com](http://www.geonlineusa.com)

089-239-00  
Revision Date: 12/01/06  
Print Date: 12/06

(12)

44-76048

**GE MONEY BANK**  
**CREDIT CARD AGREEMENT**

**You need not accept this credit card or pay any fee disclosed unless you see the card.**

[illegible]

**2. USE OF ACCOUNT.** You may use your Account (i) to purchase goods or services ("Purchases"), (ii) to obtain cash advances ("Cash Advances") by writing convenience checks ("Convenience Checks") we may provide to you, from time to time or by other means we may make available, or (iii) to transfer funds from other credit and accounts to this Account ("Balance Transfers"). We may use your Account for other purposes, including but not limited to, by means (including balance transfer checks) we may establish for you, from time to time, in each case up to any credit limit we may establish for your Account ("Credit Limit"). Except as otherwise provided in the Agreement or Account ("Other Limit"). Except as otherwise provided in Purchases, you may appreciate that, Balances (interests will be treated as Purchases, and not include Balances (interests to this Account from other accounts with us or of any of our affiliates. We may link your Cash Advances to a portion of your Credit Limit ("Cash Limit") and if we do, you agree not to use Cash Advances in excess of your Cash Limit. We may decide to authorize any Purchases in excess of your Cash Limit. We may decide to change your Credit Limit at any time. Balances (interest or Cash Advances or checks your Credit Limit at any time. Balances (interest or Cash Advances or checks your Credit Limit at any time. You may use your Account only for personal, family or household purposes.

**1. PROMISE TO PAY.** You promise to pay us for all credit that we extend on your Account for Purchases, Balance Transfer, Cash Advances, and all other amounts owed to us under the terms of this Agreement.

#### 4. PERIODIC FINANCE CHARGES

A. We calculate the periodic Finance Charge separately for Purchases and Cash Advances. The Annual Percentage Rate may sometimes differ for these two types of transactions. For example, if the Annual Percentage Rate for Cash Advances is 18% and the Annual Percentage Rate for Purchases is 15%, we calculate the Finance Charge for Cash Advances at 18% and the Finance Charge for Purchases at 15%. For each billing period, the Finance Charge is imposed, the amount of the Finance Charge is then added to (a) the amount of the periodic Finance Charge calculated during the current billing period, plus (b) if you had a Purchase Balance during the previous billing period, the amount of the periodic Finance Charge that was calculated on that Purchase Balance during the prior billing period, but excluding on that Purchase Balance during the prior billing period that is imposed in that billing period. The periodic Finance Charge for the billing period is calculated by applying the applicable daily periodic rate to the Finance Charge for the current billing period, plus the periodic Finance Charge for each day in the billing period, to the periodic Finance Charge for each day in the billing period, together with all of those daily Finance Charge amounts. A minimum Finance Charge of up to \$1.50 will be imposed for each billing period in which your Account is subject to a Finance Charge.

B. The periodic Finance Charges will be determined separately, charges incurred under any Special Payment Plan in accordance with the terms established for such Special Payment Plan, *understand and acknowledge that this Account provides for daily compounding of periodic Finance Charges.*

## 6. PERIODIC RATES

A. The Puttable Rate for your Purchase Balance is the Purchase Standard Rate, unless the Defaulting Rate applies as described below.

Purchase Standard Rate for a billing period is the greater of (a) the Purchase Standard Rate for a billing period immediately preceding the current billing period, times 1.03%, or (b) 6.99% (APR 22.98%).

Three Rate for a billing period is the highest loan prime rate published in the Money Rates Section of The Wall Street Journal Eastern Edition business day before the first day of that billing period (APR 22.98% 1-2018; the Purchase Standard Rate was 20.625% (APR 22.98%

(1)

9. The Periodic Rate for your Cash Advances Balance is the Cash Standard Rate, unless the Delinquency Rate applies as described below. The Cash Standard Rate for a billing period is the greater of (i) the Prime Rate plus 14.72%, times 1.0355, or (ii) 0.0002576 (APR 22.89%). As of October 1, 2005, the Cash Standard Rate was 0.002535 (APR 22.89%).
10. The Periodic Rates and corresponding APRs for all Account Balances (including any prearranged rates) may be increased if you fail to make a required Minimum Payment by the Payment Due Date, you make a payment to us that is not honored by your bank or you exceed your Credit Limit. If we increase your Periodic Rates, the new Periodic Rates will be equal to the Delinquency Rate, or at our discretion a lower rate. Our decision may be based on factors such as the firming or tightening of your credit, your payment and payment history and other factors relating to the Account. The increased Periodic Rates will apply to your existing balances and future transactions and will also effect us of the first ending of the billing period in which your missed or returned payment was due or in which you exceeded your Credit Limit. We also may change rates or other terms as provided in the "Interest Charges" section of this Agreement. The Delinquency Rate for a billing period is the greater of (i) the Prime Rate plus 20.17%, times 1.0355, or (ii) 0.002914% (APR 26.657%). As of October 1, 2005, the Delinquency Rate was 0.004236 (APR 26.657%).
11. The Periodic Rates and corresponding APRs may vary. If the Prime Rate increases, the Periodic Rates and corresponding APRs may increase and, as a result, the periodic Finance Charge, Minimum Payment and number of payments also may increase. Any changes in the Periodic Rates will apply to your entire Account balance (unless otherwise specified in any applicable Special Payment Plan). A change in the Prime Rate will also effect on the first day of the billing period that commences after the change. We may select a new interest rate index if the Prime Rate is not available.
12. BALANCE SUBJECT TO PERIODIC FINANCE CHARGES. The balance subject to a periodic Finance Charge is calculated separately for Purchases and Cash Advances.
13. A. The Purchase Balance subject to a periodic Finance Charge is the Purchase Daily Balance of the Account. To determine the Purchase Daily Balance, we take the prior day's Purchase Balance of your Account, which includes unpaid periodic Finance Charges on your Purchase Balance, and add any new Purchases, including any Balance Transfers that are treated as Purchases, and other debts charged to your Account that day, and subtract any payments and other credits applied to your Purchase Balance that day. Each day we also add any periodic Finance Charges on your Purchase Balance and other Finance Charges and fees (other than transaction fees for Cash Advances), including any debt correction fees, assessed that day to your Account. This gives us the Purchase Daily Balance of the Account. Any Purchase Daily Balance of less than zero will be treated as zero.
14. B. The Cash Advance Balance subject to a periodic Finance Charge is the Cash Advance Daily Balance of the Account. To determine the Cash Advance Daily Balance, we take the prior day's Cash Advance Balance of your Account, which includes any unpaid periodic Finance Charges on your Cash Advance Balance, and add any new Cash Advances, including any Balance Transfers that are treated as Cash Advances, transaction fees for Cash Advances and periodic Finance Charges on your Cash Advance Balance for that day and subtract payments and other credits applied to your Cash Advance Balance that day. This gives us the Cash Advance Daily Balance of the Account. Any Cash Advance Daily Balance of less than zero will be treated as zero.
15. 7. WHEN PERIODIC FINANCE CHARGES BEGIN TO ACCRUE. Purchases and Cash Advances begin to accrue periodic Finance Charges from the date of the transaction (or at our option, from the date they are posted to your Account) and continue to accrue Finance Charges until the charge is paid in full. However, you can avoid periodic Finance Charges on new Purchases in the Current Billing Period if, for each billing period, you pay your New Balance, including any Cash Advance balance, and any balance of Purchases made
- (2)

under any Special Payment Plan, it will be on or before the Payment Due Date for such billing period. There is no period within which you can avoid arrearages. Finance Charges on Cash Advances or Transaction Fees for Cash Advances.

- A. You must pay at least the Minimum Payment on your Statement by the Payment Due Date shown on the Statement. You may pay more than the Minimum Payment at any time. Any time the APR applicable to your Account is 24.0% or less, your Minimum Payment (which will be (i) the greater of \$15.0% or 3% of your New Balance, excluding any finance charges due to you under any Special Payment Plan, and (ii) any past due payments), rounded to the next highest dollar, plus (j) any past due payments, rounded to the next highest dollar, plus (k) any payment due under the APR applicable to your Account if greater than 24.0%, your Minimum Payment (which will be (l) the greater of \$15.0% or 3.5% of your New Balance, excluding any balance attributable to any Special Payment Plan that involves delayed or expedited payments), rounded to the next full dollar, plus (m) any past due amounts, plus (n) any payment not higher than \$25.00.
- B. If you are a cardholder, your payments are due under any Special Payment Plan. However, if your payments are due under any Special Payment Plan, interest on your Account each month, not subject to pay the Finance Charges on your Account each month, plus 1% of your New Balance each month, plus any Late Payment Fee and Over Limit Payment Fee will be charged to the greater of the Maximum Monthly Payment calculation stated above, or the sum of 1% of your New Balance plus Finance Charges, Late Payment Fees and Over Limit Payment Fees based on your Statement. In such case, your Minimum Payment also will include any past due amounts and any payment due under any Special Payment Plan. The Minimum Payment will be the New Balance if the New Balance is less than \$15.
- C. All written communications concerning disputed amounts, including any check or other payment instrument that (i) indicates that the payment constitutes "payment in full" or is tendered as full satisfaction of a disputed amount, or (ii) is tendered with other conditions or limitations ("Disputed Payments"), must be mailed or delivered to us at the address for billing inquiries shown on the Statement, not the Payment Address.
- D. A payment, except Disputed Payments, must be mailed or delivered to us at the address shown on your Statement (the "Payment Address"). Any payments received after 5:00 p.m. on any business day, or on any day other than a business day, will be credited on the next business day. Credit to your Account may be delayed up to five days if payment (a) is not received at the Payment Address, (b) does if payment (c) is not received from a U.S. financial institution located in the U.S., (d) is not accompanied by the remittance coupon attached to your Statement, (e) contains memo text onto coupon or remittance coupon, (f) is not received in the remittance envelope provided or (g) includes staples, paper clips, ties, a rubber stamp, or correspondence of any type, if the Credit Card Program allows in-state payments. You agree that any payments on your Account delivered to a Participating Processor are handled by the Participating Processor as a convenience to you and are not received or accepted by us until physically delivered to us. Although we post your payments in the manner described above, we may delay posting your payments to your Account in the amount of your payment. All credits for payments to your Account are subject to first payment by the institution on which the item of payment was drawn.
- E. We reserve the right to select the method by which payments and credits are allocated to your Account in our sole discretion. The payment methods are allocated to your Account in the prior Finance Charges on statement mailed that we can vary result in higher Finance Charges on promotional or non-promotional Purchases, and the third and amount of your payments. For example, on promotions requiring a Minimum Payment, payments over the minimum will usually be applied to those promotional balances before non-promotional and other balances. If you have a non-promotional balance, this may reduce the benefit from the promotion. If you want to change the allocation, please call customer service at 1-866-863-7664.

**E. We reserve the right to debit payment electronically for any check or other instrument that you intend to use by depositing in (electronic) debit in the amount of your check or instrument to your account. Your check or item will not be returned to you by us or your bank.**

**9. FEES. You agree to pay the following fees.**

- A. A Late Payment Fee, if we have not received your minimum Payment by the Payment Due Date shown on your Statement. The amount of the Late Payment Fee will be based on your New Balance at the end of the billing period ending after the Payment Due Date. The Late Payment Fee will be \$15 for a New Balance under \$89.95, \$28 for a New Balance of \$100.00 to \$99.95, and \$35 for a New Balance of \$100.00 or more.
- B. A Returned Check Fee of \$30 if any check or other instrument sent to us, or any electronic payment authorization you provide us in payment on your Account, is not honored upon first presentation, even if the check, instrument or electronic authorization is later honored.
- C. An Over Limit Fee of \$30 for each billing period in which your New Balance as shown on your Statement exceeds your Credit Limit. We may assess an Over Limit Fee even if we authorize the transactions on your Account that caused you to exceed your Credit Limit or if you exceed your Credit Limit as a result of unpaid Finance Charges, the billing of delinquent secured Finance Charges or other fees.
- D. A Transaction Fee for each Cash Advance that posts to your Account, including any Balance Transfer treated as a Cash Advance. This fee will be a FINANCE CHARGE equal to 4% of the amount of the Cash Advance, with a minimum of \$5.
- E. A Returned Loan Check Fee of \$30 in the event any Convenience Check on your Account is not honored by us because (i) the portion of your Credit Limit available for Convenience Checks is insufficient to cover the amount of the Convenience Check, (ii) you have filed a petition in bankruptcy, (iii) the Convenience Check has expired, or (iv) your Account has been closed.
- F. A Stop Payment Fee of \$30 if we stop payment on any Convenience Check at your request. You may request that we stop payment on a Convenience Check (any check it is replaced by) notifying us in writing at P.O. Box 981423, El Paso, TX 78939-1403, After Payment Processing or by calling us at the telephone number on your Statement. If you call and order a stop payment, we must receive written confirmation of the stop payment order from you within fourteen (14) days of the call or the stop payment order will expire. The written stop payment order must include the Convenience Check number, stop payment order must include the Convenience Check number, payee, amount and date of the Convenience Check on which you wish it to be stopped. A written stop payment order will expire six (6) months after we receive it unless the stop payment order is renewed in writing.
- G. A Transaction Fee for each Balance Transfer treated as a Purchase equal to 4% of the amount of the Balance Transfer, with a minimum of \$5.
- H. SECURITY INTEREST. You grant us a purchase money security interest in each item of merchandise purchased on your Account to secure the payment of the purchase price of such merchandise. We shall have the right to determine the extent of our purchase money security interest in each such item of merchandise, your payments will be allocated first to Finance Charges on the Account and then to pay off each Purchase on the Account in the order in which the Purchase was made (if more than one item was purchased on the same day, your payments will be allocated to pay off the latest placed item first, if you made a Purchase pursuant to a credit





**Judgment/appeals:** Any court having jurisdiction may enter judgment upon the arbitrator's award. The arbitrator's decision will be final and binding except for: (1) any appeal filed under the FAA, and (2) any party may seek review of the arbitrator's decision relating to claims of more than \$100,000 in a three-judge district court appointed by the arbitrator, which will reconsider all award-related points asserted by the arbitrator, which will reconsider in light of any aspect of the award denied. If you request, we will consider in light of a request that we pay any additional fees of the arbitrator or arbitrator.

IMPORTANT LIMITATIONS AND RESTRICTIONS: IF A CLAIM GOES TO ARBITRATION, NEITHER YOU NOR WE WILL HAVE THE RIGHT TO: (1) HAVE A COURT OR A JURY DECIDE THE CLAIM; (2) ENGAGE IN DISCOVERY (I.E., THE RIGHT TO OBTAIN INFORMATION FROM THE OTHER PARTY) TO THE SAME EXTENT THAT YOU OR WE COULD IN COURT; (3) PARTICIPATE IN A CLASS ACTION IN COURT OR IN ARBITRATION, EITHER AS A CLASS REPRESENTATIVE OR A CLASS MEMBER; (4) ACT AS A PRIVATE ATTORNEY GENERAL IN COURT OR IN ARBITRATION; OR (5) JOIN OR CONSOLIDATE CLAIM(S) WITH CLAIMS OF ANY OTHER PERSON. THE RIGHT TO APPEAL IS MORE LIMITED IN ARBITRATION THAN IN COURT. OTHER RIGHTS THAT YOU OR WE WOULD HAVE IF YOU OR WE WENT TO COURT MAY ALSO NOT BE AVAILABLE IN ARBITRATION. ONLY A COURT MAY DETERMINE THE VALIDITY AND EFFECT OF PARTS 3, 4, AND 6 OF THIS PARAGRAPH. IF A COURT SHOULD HOLD SUCH PROVISION TO BE INVALID, THEN THE ENTIRE ARBITRATION PROVISION SHALL BE NULL AND VOID. HOWEVER, THIS WILL NOT LIMIT THE RIGHT TO APPEAL SUCH HOLDING. IF A COURT SHOULD HOLD ANY OTHER PART(S) OF THIS ARBITRATION PROVISION TO BE INVALID, THE REMAINING PARTS SHALL BE ENFORCEABLE. IN NO EVENT SHALL THE INVALIDATION OF ANY PART OF THE ARBITRATION PROVISION HAVE THE EFFECT OF AUTHORIZING AN ARBITRATOR TO MAKE AN AWARD TO, ON BEHALF OF, OR AGAINST, ANY PERSON WHO IS NOT A NAMED PARTY TO THE ARBITRATION.

This arbitration provision will survive the termination of your Account and the Card and will remain in force no matter what happens to you or your Account. In case of any conflict or inconsistency, this Agreement controls over any rules and procedures of the arbitration administrator.

22. **GOVERNING LAW.** Except as provided in the subordination provision, this Agreement and your Account and any claim, dispute or controversy arising from or relating to this Agreement, or your Account, whether based on contract, tort, fraud and other intentional torts, statute, common law and/or equity, are governed by and construed in accordance with federal law, and to the extent that state law applies, the laws of the State of Utah (hereinafter "Utah") (hereinafter "law"). The legally enforceability and interpretation of this Agreement and the amounts contracted for, charged and received under this Agreement will be governed by such laws. This Agreement is entered into between you and us in Utah. We make decisions about granting credit to you from, extend credit to you under this Agreement from, and accept your payments in Utah.

**23. ASSIGNMENT.** We may sell, assign or transfer any of our rights or obligations under this Agreement or your Account, including our rights to payments, without prior notice to you. You may not sell, assign or transfer any of your rights or obligations under the Agreement or your Account.

**24. SEVERABILITY.** If any provision of this Agreement is determined to be void or unenforceable under applicable law, all other provisions of this Agreement shall still be valid and enforceable.

**25. ENTIRE AGREEMENT.** This Agreement, together with any application you signed or otherwise submitted in connection with the Account (which is hereby incorporated by reference in this Agreement), constitutes the entire agreement between you and us relating to your Account and supercedes any other prior or contemporaneous agreement between you and us relating to your Account. This Agreement may not be amended or accepted in accordance with the provisions of this Agreement. It is not the intention of the parties that anything in this Agreement should result in the assessment of fines or charges in excess of those permitted by applicable law. If any law or change enacted under this Agreement is finally determined to be in excess of that permitted by applicable law, the excess amount will be applied to reduce the outstanding balance in your Account. If there is no outstanding balance, will be refunded to you.

## FEDERAL AND STATE NOTICES

**NEW JERSEY RESIDENTS:** Because certain provisions of the Agreement are subject to applicable law, they may be void, unenforceable or inapplicable in some jurisdictions. None of these provisions, however, is void, unenforceable or inapplicable in New Jersey.

**PUERTO RICO RESIDENTS:** You may request a copy of this Agreement in Spanish.

**Your signature on the application or sales slip for the initial purchase approved on this Account represents your signature on this Agreement and is incorporated by reference.**

Mark Twain

Mark D. Hayes  
Vice President, Marketing  
GE Money Bank  
4246 South Riverbowl Rd., Suite 2000  
Salt Lake City, UT 84123-2651

**Notice:** The following is important information regarding your right to dispute billing errors.

**YOUR BILLING RIGHTS  
KEEP THIS NOTICE FOR FUTURE USE**

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

**Notably Use in Case of Errors or Omissions About Your Bill:** If you think your bill is wrong or if you need more information about a transaction on your bill, write us on a separate sheet of the address shown on your Statement under Billing Inquiries. Write us as soon as possible. We must have your letter within 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your right.

**In your letter, give us the following information:**

**Your name and Account number.**  
The dollar amount of the suspected error.  
Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

**Your Rights and Our Responsibilities After We Receive Your Written Notice**

Dear Member:

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 60 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you owe, or report you as delinquent. We can continue to bill you for this amount, or request, meaning financed charges, and we can supply any unpaid amount against your credit limit. You do not have to pay any unpaid amount while we are still investigating, but you are still obligated to pay the parts of your bill that are not in question.

[illegible]

It was *not* follow these rules, we can't collect the first \$50 of the questioned amount, even if your bill was correct.

**Special: Rule for Credit Card Purchases** If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services. There are two limitations on this right:

(a) You must have made the purchases in your home state or, if not within your home state, within 100 miles of your current mailing address; and

(b) The purchase price must have been more than \$50

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

## PRIVACY POLICY

The Privacy Policy describes our information collection and sharing practices, how we use your information, and how you can control your personal data. Passes need to comply and retain with your records for the Account. This Policy applies only to current and former customers and participants in their relationships with us relating to the consumer credit Account of GE Money Bank ("GEMLB," the "Bank" or "we"). In this policy, the term "Provider" refers to both CarCard LLC and each participating provider that accounts the CarCard card.

**Information We Collect** - We collect personally identifiable information about you (such as your e-mail, phone number, social security number, mother's maiden name, and home address) about their purchased products and services, and information about their browsing, searching and purchasing purposes. We obtain information about you directly from you (such as an application, form, through your use of our products and services, and in some cases, from third parties (such as credit bureaus and demographic firms). Occasionally, we may also collect information about you online using "cookies" (small pieces of data stored by your browser on your computer) or other technology that we use to enhance products for you, to track your website usage with us, and to enhance products for you. We may also collect information about you from you with customized content, among other things.



Account Number	0019 1830 0163 2878
\$1,125.00	\$700.00
02/22/2009	03/17/2009
\$60.78	See Details Below
\$1,181.78	

Fill in Amount Completely: \$

Payment due includes 703.00 paid due. Please pay the past due amount PROMPTLY.

Note: You have a Promotional Purchase Plan. See Promotional Purchase Summary Below For Details.

☐ New address or email?  
Check the box at left and  
print changes on back

150720016526761

Mail Payments to: GE MONEY BANK  
PO BOX 960081  
ORLANDO, FL 32896-0081

!328960061618!

SANDRA L GAILSMAN  
3015 PERRY AVE APT 3G  
BRONX NY 10458-1721  
!104581721371!

01181760035500 011817601205676 000601918 3001652 67662

Pay online at [www.geonlinefinance.com](http://www.geonlinefinance.com) or enclose this coupon with your check to GE MONEY BANK. Please use Mail or Check only.

CARE CREDIT/GEMB

GE Money

For Customer Service visit us online at [www.geonlinefinance.com](http://www.geonlinefinance.com) or call 1-888-833-7884 to report your card lost or stolen.

Account Number	6019 1830 0163 2878
Statement Date	02/22/2009
Payment Due Date	03/17/2009
Minimum Payment This Period	\$422.00
Amount Past Due	\$703.00
Total Minimum Payment Due	\$1,125.00
Overlimit Amount	\$58.78
Suggested Payment	\$1,181.78
Days This Period	31
PAYMENT DUE BY 5 P.M. ON THE DUE DATE	
We may convert your payment into an electronic debit.	
See reverse side.	
Previous Balance	\$1,797.18
New Purchases / Balance Transfers	\$0.00
Payments	\$0.00
Credits, Fees & Adjustments (net)	\$39.00
FINANCE CHARGE	\$220.58
Transaction Fees (net)	
New Balance	\$12,056.76
Credit Limit	\$12,000.00
Available Credit	\$0.00

Trans Date	Post Date	Reference Number	Description	Amount
02/14/2009	02/14/2009		LATE FEE	\$39.00
02/22/2009	02/22/2009		FINANCE CHARGE	\$220.58
Note: The final payment for your promissory purchase(s) is due prior to a scheduled Due Date on your Account. You must pay your promissory purchase(s) in full by the Promotional Expiration Date(s) to avoid being billed finance charges (the default of purchase). See Promotional Purchase Summary below for your Promotional Expiration Date(s) and details.				

Promotional Expiration Date	Promotional Balance	Deferred FINANCE CHARGE	Trans Date	Promotion Type	Initial Transaction Amount
04/21/2009	\$2,462.18	\$238.41	10/07/2008	With Pay Deferred Interest	\$2,630.00
05/21/2009	\$795.34	\$59.65	10/13/2008	With Pay Deferred Interest	\$820.00
* If you would like to make more than one payment see MAIL PAYMENT TO address or pay online at <a href="http://www.geonlinefinance.com">www.geonlinefinance.com</a>					

How Your FINANCE CHARGE Was Calculated	Computed on Average Daily Periodic Balance	Daily (D) Periodic Rate	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE
Purchases	\$4,658.12	0.00217% (D)	29.89%	\$270.58
With Pay Deferred Interest	\$2,630.59	0.00217% (D)	29.89%	\$0.00
With Pay Deferred Interest	\$940.00	0.00217% (D)	29.89%	\$0.00
ANNUAL PERCENTAGE RATE - Purchases	29.990%	Total Periodic FINANCE CHARGE		\$270.58

In order to protect your account privacy, we are unable to provide account information to anyone other than the cardholder(s) or an authorized party. If you wish to permit us to speak to an authorized party such as a spouse about your account, please send written authorization to the General Inq. Unit address.	
If you pay the "Suggested Payment" amount you will bring your account below your credit limit and avoid additional Overlimit Fees.	
YOUR PERIODIC RATE AND ANNUAL PERCENTAGE RATE MAY VARY.	
PAYMENT ON YOUR ACCOUNT IS REQUIRED, IF YOU HAVE A PROMOTIONAL BALANCE. THE DEFERRED INTEREST PERIOD, PROMOTIONAL INTEREST RATE PERIOD, OR FIXED PAYMENT PLAN HAS BEEN TERMINATED.	
CALL 1-800-282-7508	

\* NOTICE: See reverse side and additional pages (if any) for important information concerning your account.

3302 P40 1 1 22 018222 X PAGE 1 of 3 0017 3000 0004 01003103



ACCOUNT NUMBER 6019 1830 0185 2576  
STATEMENT DATE 02/22/2009

**NEW CARECREDIT WEBSITE**

The New CareCredit Cardholder Website is Better than Ever! You can easily access more account resources and sign up to receive email communications from CareCredit. Visit [CareCredit.com/Cardholder](http://CareCredit.com/Cardholder) today to see the new website for yourself. Remember you can count on CareCredit again and again to look and feel your best for you and your entire family. With 75,000 providers nationwide and flexible payment plans available, there's nothing stopping you. There are so many ways to use CareCredit, and all of them can help you achieve a healthier, happier you. Dental treatments to help you light up a room with your smile, LASIK surgery and vision care so you'll always have a clear perspective and cosmetic procedures to enhance your natural beauty. And remember, you can always count on CareCredit for your pets - for great care without compromise.

**GET THE RESULTS YOU WANT**

CALL 1-866-883-7884 TO FIND A PROVIDER NEAR YOU! CARECREDIT...HEALTHCARE FINANCING ON YOUR TERMS.

Share your opinions! Join the CareCredit Advisory Panel - go to [CareCreditPanel.com](http://CareCreditPanel.com).

Account Number 5019 1830 0165 2678					
\$1,125.00	\$1,125.00	04/14/2009	\$278.37	\$1,125.00	\$2,247.37

Fill in Amount Completely: \$

Payment due includes 1,125.00 past due. Please pay the past due amount PROMPTLY.

☐ New address or e-mail?  
Check the box at left and  
print changes on back

507230016516161  
Mail Payment to: GE MONEY BANK  
PO BOX 960081  
ORLANDO, FL 32896-0061  
13289600616181

SANDRA L SALLSMAN  
3015 PERITY AVE APT 30  
BRONX NY 10458-1721  
11045817213711

02247370035500 022473701267837 000601918 3001652 67662

Pay online at [www.geonline.service.com](http://www.geonline.service.com) or enclose the coupon with your check to GE MONEY BANK. Please call due or back to.

CARE CREDIT/GE MB

GE Money

For Customer Service visit us online at [www.geonline.service.com](http://www.geonline.service.com) or call 1-888-893-7864 to report your card lost or stolen.

ACCOUNT INFORMATION		ACCOUNT SUMMARY	
Account Number	5019 1830 0165 2678	Previous Balance	\$12,056.78
Statement Date	03/22/2009	New Purchases / Balance Transfers	\$0.00
Payment Due Date	04/14/2009	Payments	\$0.00
Minimum Payment This Period	\$444.00	Credits, Fees & Adjustments (net)	\$39.00
Amount Past Due	\$1,125.00	FINANCE CHARGE / Transaction Fees (net)	\$582.61
Total Minimum Payment Due	\$1,569.00	New Balance	\$12,678.37
Overdue Amount	\$878.37	Credit Limit	\$12,000.00
Suggested Payment	\$2,247.37	Available Credit	\$0.00
Days This Period	26		
PAYMENT DUE BY 5 P.M. ON THE DUE DATE			
We may convert your payment into an electronic debit.			
See reverse side.			

Tran Date	Post Date	Reference Number	Description	Amount
03/17/2009	03/17/2009		LATE FEE	\$39.00
03/22/2009	03/22/2009		FINANCE CHARGE	\$582.61

You will incur no Finance Charges on a Deferred Interest promotional purchase, provided the promotional purchase amount is paid in full by the Indicated Promotional Expiration Date and you pay, by the Payment Due Date, each Minimum Payment Due on your Account prior to the Promotional Expiration Date. If you do not satisfy these requirements, Finance Charges accrued from the date of purchase will be added to your Account.

Promotional Expiration Date	Promotional Balance	Deferred FINANCE CHARGE	Tran Date	Promotion Type	Initial Transaction Amount
CANCELLED	\$2,781.34	\$301.19	10/07/2008	Win Pay Deferred Interest	\$2,890.00
CANCELLED	\$871.82	\$76.48	11/13/2008	Win Pay Deferred Interest	\$928.00

\* If you would like to make more than one payment, see MAIL PAYMENT TO address or pay online at [www.geonline.service.com](http://www.geonline.service.com).

\* NOTICE: See reverse side and additional pages (if any) for important information concerning your account.

13289600616181 PAGE 1 of 3 04/14/2009 03/22/2009 01652678

#### Important Notice Regarding Your GE Money Bank Credit Card Account March 2009

Please read this Notice carefully and retain it for your records.

This Notice changes the following terms of your GE Money Bank Credit Card Agreement governing the Account referred to in the enclosed Statement. The changes will be effective on the first day of your April 2009 billing cycle. All other terms of your Agreement remain the same.

- Late Payment Fee.** The Late Payment Fee will increase from \$29 to \$29.99 for a balance of \$249.99 or less and from \$39 to \$39.99 for a balance of \$250.00 or more.
- Other Fees.** The Returned Check Fee, Returned Loan Check Fee and Stop Payment Fee will increase from \$39 to \$39.99.

If you have any questions about this Notice, please call the customer service number as noted on your Statement.





ACCOUNT NUMBER 6019 1830 0185 2576  
STATEMENT DATE 03/22/2009

How Your FINANCE CHARGE Was Calculated	Computed on Average Daily Principal Balance	Daily (D) Periodic Rate	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE
Purchases	\$8,907.53	0.06217% (D)	19.99%	\$204.94
When Pay Deferred Interest	\$2,728.70	0.06217% (D)	20.99%	\$301.19
When Pay Deferred Interest	\$691.50	0.06217% (D)	20.99%	\$76.49
ANNUAL PERCENTAGE RATE - Purchases	29.990%	Total Periodic FINANCE CHARGE		\$582.61

PLEASE NOTE: ENCLOSED IS THE PRIVACY POLICY. PLEASE TAKE A MOMENT TO READ IT THEN KEEP THIS WITH OTHER FINANCIAL DOCUMENTS. IF YOU HAVE PREVIOUSLY OPTED-OUT FOR THE PRIVACY POLICY, YOU DO NOT NEED TO DO SO AGAIN.

In order to protect your account privacy, we are unable to provide account information to anyone other than the cardholder(s) or an authorized party. If you wish to permit us to speak to an authorized party such as a spouse about your account, please send written authorization to the General Inq. writer address.

If you pay the "Suggested Payment" amount you will bring your account below your credit limit and avoid additional Overlimit Fees.

YOUR PERIODIC RATE AND ANNUAL PERCENTAGE RATE MAY VARY.

YOUR ACCOUNT IS 60 DAYS PAST DUE. IT IS  
CRITICAL THAT YOU CONTACT US TO PROTECT  
YOUR CREDIT. 1-800-399-5166

Remember you can count on CareCredit again and again to look and feel your best for you and your entire family. With 75,000 providers nationwide and flexible payment plans available, there's nothing stopping you. There are so many ways to use CareCredit, and all of them can help you achieve a healthier, happier you. Dental treatments to help you light up a room with your smile, LASIK surgery and vision care so you'll always have a clear perspective and cosmetic procedures to enhance your natural beauty. And remember, you can always count on CareCredit for your pets - for great care without compromise.

CALL 1-866-633-7864 TO FIND A PROVIDER NEAR YOU! CARECREDIT...HEALTHCARE  
FINANCING ON YOUR TERMS.

Share your options! Join the CareCredit Advisory Panel - go to CareCreditPanel.com.

Account Number 6019 1830 0163 2678

\$2,026.00	\$1,569.00	05/15/2009	\$1,045.62	\$13,045.62	\$3,071.62
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Fill in Amount Completely: \$

Payment due includes \$1,569.00 past due. Please pay the past due amount PROMPTLY.

☐ New address or e-mail?  
Check this box at left and  
print changes on back

150723001652676

Mail Payments to: GE MONEY BANK  
PO BOX 860061  
ORLANDO, FL 32896-0061

13289600616181

SANDRA L. BAILEMAN  
3016 PERRY AVE APT 3G  
BRONX NY 10458-1721  
11045817213711

03071620035500 030716201304562 000601918 3001652 67662

Pay online at [www.geonline.service.com](http://www.geonline.service.com) or enclose this coupon with your check to GE MONEY BANK. Please use blue or black ink.

CARE CREDIT/GE MB

GE Money

Pay online for free at [www.geonline.service.com](http://www.geonline.service.com).

For customer service or to report your card lost or stolen, call 1-888-893-7864. Best times to call are Wednesday - Friday.

Account Number	6019 1830 0163 2678
Statement Date	04/22/2009
Payment Due Date	05/15/2009
Minimum Payment This Period	\$457.00
Amount Past Due	\$1,569.00
Total Minimum Payment Due	\$2,026.00
Overlimit Amount	\$1,045.62
Suggested Payment	\$3,071.62
Days This Period	31
<b>PAYMENT DUE BY 3 P.M. EASTERN ON THE DUE DATE</b>	
We may convert your payment into an electronic debit.	
See reverse side.	

Previous Balance	\$12,578.37
New Purchases / Balance Transfers	\$0.00
Payments	\$0.00
Credits, Fees & Adjustments (net)	\$38.99
FINANCE CHARGE / Transaction Fees (net)	\$327.26
New Balance	\$13,045.62
Credit Limit	\$12,000.00
Available Credit	\$0.00

Transaction Date	Post Date	Reference Number	Description	Amount
04/14/2009	04/14/2009		LATE FEE	\$30.00
04/22/2009	04/22/2009		"FINANCE CHARGE"	\$327.26

How Your FINANCE CHARGE Was Calculated	Computed on Average Daily Principal Balance	Daily (1) Periodic Rate	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE
Purchases	\$12,947.48	0.0217% (1)	23.99%	\$327.26
ANNUAL PERCENTAGE RATE - Purchases	23.99%	Total Periodic FINANCE CHARGE		\$327.26

**OUR POLICY ON PRIVACY**

In order to protect your account privacy, we are unable to provide account information to anyone other than the cardholder(s) or an authorized party. If you wish to permit us to speak to an authorized party such as a spouse about your account, please send written authorization to the General Inquiries address.

If you pay the "Suggested Payment" amount you will bring your account below your credit limit and avoid additional Overlimit Fees.

**YOUR PERIODIC RATE AND ANNUAL PERCENTAGE RATE MAY VARY.**

**YOUR ACCOUNT REMAINS PAST DUE. PROTECT YOUR CREDIT BY SENDING THE AMOUNT DUE TODAY OR CALL 1-800-399-5186**

Remember you can count on CareCredit again and again to look and feel your best for you and your entire family. With 75,000 providers nationwide and flexible payment plans available, there's nothing stopping you. There are so many ways to use CareCredit, and all of them can help you achieve a healthier, happier you. Dental treatments to help you fight up a room with your smile. LASIK surgery and vision care so you'll always have a clear perspective and correct procedures to enhance your natural beauty. And remember, you can always count on CareCredit for your pets - for great care without compromise.

**CALL 1-888-893-7864 TO FIND A PROVIDER NEAR YOU! CARECREDIT...HEALTHCARE FINANCING ON YOUR TERMS.**

Share your opinion! Join the CareCredit Advisory Panel - go to [CareCreditPanel.com](http://CareCreditPanel.com).

\* NOTICE: See reverse side and additional pages (if any) for important information concerning your account.

5302 PNC 3 7 22 094421 1 PAGE 1 OF 1 1073 2800 0414 01233702

Account Number 4018 1033 0165 287					
12,477.00	12,028.00	06/10/2009	11,450.32	11,450.32	12,947.28

Fill in Amount Completely: \$

Payment due includes \$2,025.00 past due. Please pay the past due amount PROMPTLY.

☐ New address or e-mail?  
Check the box at left and  
print changes on back

1307230016326761

Mail Payments to: GE MONEY BANK  
PO BOX 960061  
ORLANDO, FL 32896-0061

!328960061618!

SANDRA L. SALLSMAN  
3015 PERRY AVE APT 3G  
BRONX NY 10458-1721  
!104581721371!

03947320035500 039473201345032 000601918 3001652 67662

Pay online at [www.grocerieservice.com](http://www.grocerieservice.com) or scratch the coupon with your check to GO MONEY BANK. Please use blue or black ink.

CARE CREDIT/GEMB

**GE Money**

Buy online for free at: [www.geonineservices.com](http://www.geonineservices.com)

For customer service or to report your card lost or stolen, call 1-888-883-7884. Great times to call are Wednesday - Friday.

Account Number	6019 1630 0165 2978
Statement Date	05/22/2009
Payment Due Date	06/01/2009
Minimum Payment This Period	\$471.00
Amount Past Due	\$2,026.00
Total Minimum Payment Due	\$2,497.00
Overlimit Amount	\$1,450.32
Suggested Payment	\$3,947.32
Days This Period	30
<b>PAYMENT DUE BY 5 P.M. EASTERN ON THE DUE DATE</b>	
We may convert your payment into an electronic debit. See reverse side.	

Trans Date	Post Date	Reference Number	Description	Amount
05/22/2009	05/22/2009		OVERLAP FEE	\$39.00
05/13/2009	05/16/2009		LATE FES	\$39.98
05/22/2009	05/22/2009		"FINANCE CHARGE"	\$325.71

How Your FINANCE CHARGE Was Calculated	Computed on Average Daily Principal Balance	Daily (D) Finance Rate	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE
Purchases	\$13,212.87	0.00217% (D)	23.95%	\$28.71
ANNUAL PERCENTAGE RATE - Purchases	23.95%	Total Periodic FINANCE CHARGE		\$28.71

In order to protect your account privacy, we are unable to provide account information to anyone other than the cardholder(s) or an authorized party. If you wish to permit us to speak to an authorized party such as a spouse about your account, please send written authorization to the General Inquiries address.

If you pay the "Suggested Payment" amount you will bring your account below your credit limit and avoid additional Overdraft Fees.

**YOUR PERIODIC RATE AND ANNUAL PERCENTAGE RATE MAY VARY.**

**YOUR ACCOUNT IS SERIOUSLY PAST DUE. IT IS  
CRITICAL THAT YOU CONTACT US TODAY AT  
1-800-399-5155**

Remember you can count on CareCred<sup>®</sup> again and again to look and feel your best for you and your entire family. With 75,000 providers nationwide and flexible payment plans available, there's nothing stopping you. And all of them can help you achieve a healthier, happier you. Dental treatments to help you fight up a storm with your smile, LASIK surgery and vision care so you'll always have a clear perspective and confidence in your vision, and more. And remember, you can always count on CareCred<sup>®</sup> for your pets - for great care without compromise.

CALL 1-855-893-7854 TO FIND A PROVIDER NEAR YOUR CARECREDIT HEALTHCARE FINANCING ON YOUR TERMS.

Share your opinions! Join the CareCredit Advisory Panel - go to [CareCreditPanel.com](http://CareCreditPanel.com).





Account Number 6019 1830 0163 2676

\$3,471.00	\$0.00	07/22/2009	\$0.00	\$0.00	\$0.00
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719

Fill In Account  
Completely: \$

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Payment due includes \$0.00 past due. Please pay the past due amount PROMPTLY.

☐ Now address us e-mail?  
Check the box at left and  
print changes on back

150723001652676

Mail Payments to: GE MONEY BANK  
PO BOX 96061  
ORLANDO, FL 32896-0061

SANDRA L SALLSMAN  
3015 PERRY AVE APT 3G  
BRONX NY 10458-1721  
104581721371

13295806161P

00000000035500 0000000000000000 000601918 3001652 67662

Pay online at [www.geonline.service.com](http://www.geonline.service.com) or enclose this coupon with your check to GE MONEY BANK. Please use blue or black ink.

CARE CREDIT/GEMB

GE Money

Pay online for free at [www.geonline.service.com](http://www.geonline.service.com)

For customer service or to report your card lost or stolen, call 1-866-893-7864.

Best times to call are Wednesday - Friday.

Account Number	6019 1830 0163 2676
Statement Date	07/21/2009
Payment Due Date	07/22/2009
Total Minimum Payment Due	\$3,471.00
Days This Period	29
<b>PAYMENT DUE BY 5 P.M. EASTERN ON THE DUE DATE.</b> We may convert your payment into an electronic debit. See reverse side.	

Previous Balance	\$13,876.48
+ New Purchases / Balance Transfers	\$0.00
- Payments	\$0.00
+/- Credits, Fees & Adjustments (net)	\$13,876.48
+/- FINANCE CHARGE /	\$0.00
Transaction Fees ( net)	\$0.00
= New Balance	\$0.00
Credit Limit	\$12,000.00
Available Credit	\$0.00

Trans Date	Post Date	Reference Number	Description	Amount
07/11/2009	07/11/2009	P9072006A00999990	CHARGE OFF ACCOUNT-PRINCIPALS	\$11,018.11 CH
07/11/2009	07/11/2009	P9072006A00999990	CHARGE OFF ACCOUNT "FINANCE CHARGES"	\$2,898.36 CH
07/13/2009	07/13/2009		LATE FEE	\$39.99

How Your FINANCE CHARGE Was Calculated	Computed on Average Daily Principal Balance	Daily (D) Periodic Rate	Corresponding Annual Percentage Rate	Periodic FINANCE CHARGE
Purchases	\$0.00	0.08217% (D)	29.99%	\$0.00
ANNUAL PERCENTAGE RATE	29.99%	Total Periodic FINANCE CHARGE		\$0.00

In order to protect your account privacy, we are unable to provide account information to anyone other than the cardholder(s) or an authorized party. If you wish to permit us to speak to an authorized party such as a spouse about your account, please send written authorization to the General Inquiries address.

If you pay the "Suggested Payment" amount you will bring your account below your credit limit and avoid additional Overlimit Fees.

YOUR PERIODIC RATE AND ANNUAL PERCENTAGE RATE MAY VARY.

Remember you can count on CareCredit again and again to look and feel your best for you and your entire family. With 75,000 providers nationwide and flexible payment plans available, there's nothing stopping you. There are so many ways to use CareCredit, and all of them can help you achieve a healthier, happier you. Dental treatments to help you fight up a more with your smile. LASIK surgery and vision care so you'll always have a clear perspective and cosmetic procedures to enhance your natural beauty. And remember, you can always count on CareCredit for your pets - for great care without compromise.

CALL 1-866-893-7864 TO FIND A PROVIDER NEAR YOU! CARECREDIT...HEALTHCARE FINANCING ON YOUR TERMS.

Share your opinion! Join the CareCredit Advisory Panel - go to [CareCreditPanel.com](http://CareCreditPanel.com)

\* NOTICE: See reverse side and additional pages (if any) for important information concerning your account

1102 P40 1 5 22 090121 8 X PAGE 1 of 1 9077 1080 CISA 00 083102



**AFFIDAVIT OF SALE**

**STATE OF:** Minnesota

: SS

**COUNTY OF:** Ramsey

BEFORE ME, on the day and date set forth below, the undersigned Notary, being qualified and commissioned in and for the county and state aforesaid, personally came and appeared Karl Drenth, who being duly sworn, did depose and say:

Affiant is the DOCUMENT CONTROL SPECIALIST at GE MONEY BANK and in that capacity, Affiant is personally familiar with the debt 6019183001652676 (the "Account") made by SANDRA SAILSMAN (the "Debtor") made payable to GE MONEY BANK and subsequently sold to CACH, LLC.

The correct amount currently owed by the Debtor on Account Number is the sum of \$13,916.47 as 8/24/2009 and is reflected in all records of the account of which GE MONEY BANK has knowledge.

The following statement pertains if the debtor referenced above is a state of California resident: I certify under the penalty of perjury under the laws of the state of California that the foregoing is true and correct.

Executed this 5 day of May, 2010

  
Karl Drenth  
Document Control Specialist

Sworn to and Subscribed before me this 5 day of May, 2010

  
Notary Public



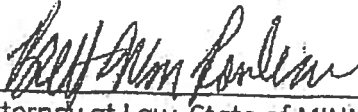
My commission expires: 1-31-15



CERTIFICATE OF CONFORMITY

I, BRETT WILLIAM ROULEAU, (an attorney-at-law admitted to practice in the State of MINNESOTA) and fully acquainted with the laws of the State of MINNESOTA pertaining to the acknowledgement or proof of deeds of real property to be recorded therein, do hereby certify that I am duly qualified to make this Certificate Of Conformity pursuant to Section 299-a of the Real Property Law of the State of New York and hereby certify that the acknowledgement or proof upon the foregoing document was taken by MAGGIE HOUSKER, a Notary Public in the State of MINNESOTA, in the manner prescribed by the laws of the State of MINNESOTA and conforms to the laws thereof in all respects.

IN WITNESS WHEREOF, I have hereunto set my signature, on MAY 5 2010.

  
\_\_\_\_\_  
Attorney at Law, State of MINNESOTA

- 74

**EXHIBIT A****BILL OF SALE**

For value received and in further consideration of the mutual covenants and conditions set forth in the Forward Flow Receivables Purchase Agreement (the "Purchase Agreement"), dated as of April 8, 2009 by and between General Electric Capital Corporation, a Delaware Corporation, GE Money Bank, a federal savings bank (collectively "Seller") and CACH, LLC ("Buyer"). Seller hereby transfers, sells, conveys, grants, and delivers to Buyer, its successor and assigns, without recourse except as set forth in the Purchase Agreement, to the extent of its ownership, the Receivables as set forth in the Notification Files (as defined in the Purchase Agreement), delivered by Seller to Buyer on each Transfer Date, and as further described in the Purchase Agreement.

General Electric Capital Corporation

By: [Signature]Title: VPDate: 8-27-09

GE Money Bank

By: [Signature]Title: FVPDate: 8-27-09

Cut-off Date	Funding Date	Face Value	# of Accounts	Purchase Price Factor	Purchase Price

5324/5324  
32143

ACCTNUM

MKR\_FN

MKR\_LN

CMPLY\_NMKR

TAXID

MKR\_AD1

MKR\_AD2 MKR\_AD3 MKR\_CITY

MKR\_ST MKR\_ZIP

6019183001652676 SANDRA

SALSMAN

115445531

3015 PERRY AVE APT 3G

BRONX

NY

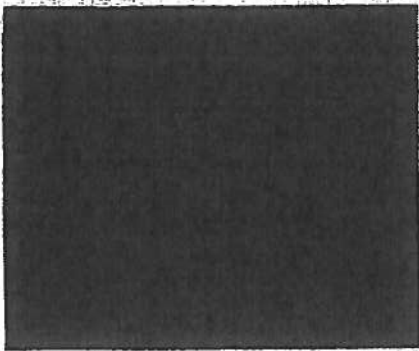
10458-1721

MKR\_HP MKR\_WP MKR\_DOB OPENDATE CHGOFF\_DATE RMSLASTLASTPMT.BRANCH DOFD CHGOFFCODE LOSSAMT CURBAL RMSFILENUM ACCTISTS

7183296061 0000000000 19520515 20071019 20090721 20081215 355 CPCH 20090122 UNPY 13916.47 13916.47 57582158 S14







CMKR\_STATE CCMKR\_ZIP



**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK     )  
  ss.:  
COUNTY OF NASSAU)

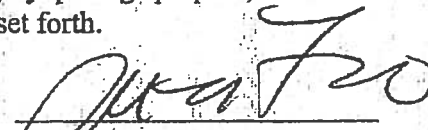
Michelle Farino, being duly sworn, deposes and says:

I am not a party to this action, am over 18 years of age and reside in the County of Queens, State of New York.

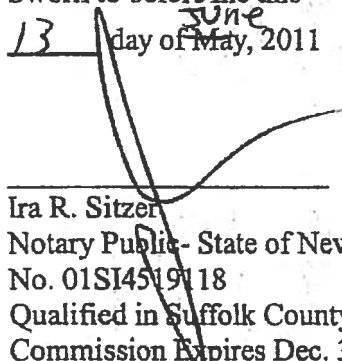
I served a copy of the within Notice of Motion to Grant Summary Judgment in favor of Plaintiff, Affirmation in Support, Affidavit in Support and annexed Exhibits on the following:

SANDRA SAILSMAN  
3015 Perry Ave 3g  
Bronx, NY 10458

by delivering one (1) copy via regular mail on <sup>June</sup> ~~May~~ 13, 2011 in a post-paid wrapper properly addressed in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York, by postage prepaid, addressed to each of the aforementioned persons at the last known address set forth.

  
Michelle Farino

Sworn to before me this  
13 day of ~~May~~ <sup>June</sup>, 2011

  
Ira R. Sitzler  
Notary Public - State of New York  
No. 01SI4519118  
Qualified in Suffolk County  
Commission Expires Dec. 31, 2014

# **EXHIBIT I**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX

-----X  
CACH, LLC

Plaintiff,

-against-

SANDRA SAILSMAN

Defendant.  
-----X

**ORDER**

Index No.: 02235/11

*Art 35 C*  
*Col. # 4*

The Plaintiff, having moved pursuant to CPLR § 3212 for an Order granting Summary Judgment in its favor and against the Defendant and said motion having been submitted on July 22, 2011, *on default*

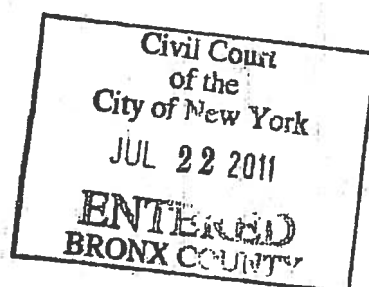
UPON the Summons and Verified Complaint, Answer, Notice of Motion to Grant Summary Judgment, affidavit of Plaintiff, affirmation in support and exhibits annexed thereto, and upon all prior proceedings had herein, and due deliberation having been had thereon;

NOW, upon motion of Daniels & Norelli, P.C., attorneys for Plaintiff, it is hereby

ORDERED that Plaintiff's motion is granted in its entirety; and it is further

ORDERED that the clerk is hereby directed to enter judgment in favor of Plaintiff and against the Defendant in the sum of \$1,916.47 together with statutory interest at the rate of 9.0% from 7/21/2009 plus costs and disbursements, and that judgment be entered accordingly.

Dated : 7/22/11



\_\_\_\_\_  
**HON. LIZBETH GONZÁLEZ**  
**JUDGE, CIVIL COURT**

# **EXHIBIT J**

CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX: PART 35C

-----X  
CACH, LLC

Plaintiff,

Index No. CV-002235-11

- against -

SANDRA SALLSMAN

Defendant.  
-----X

**DEFENDANT'S RESPONSE IN OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

State of New York, County of Bronx

SANDRA SALLSMAN, being duly sworn, deposes and says:

1. I am the Defendant in this proceeding.
2. I make this Affidavit in opposition to Plaintiff's motion for summary judgment.
3. The court should deny Plaintiff's motion for summary judgment for the following reasons:

☒ Plaintiff has not established that it has standing to bring this claim.

☒ Plaintiff has failed to provide not just the original agreement but neglected to offer a copy of such agreement. An assignment is a contract and, consequently, must be produced in order to prove its contents. Schack v. Wormster, 185 N.Y.S. 580, 581 (1st Dep't 1920).

THE BILL OF SALE IS ILLLEGIBLE AND  
THE AUTHENTICITY OF THE DOCUMENT IS SUSPECT;  
AND DOES NOT LINK DEFENDANT'S ALLEGED DEBT  
TO THE SALE TO CACH, LLC.

55:10 11/21/11

- ☒ The issue of standing can be characterized as raising questions of subject matter jurisdiction, Lacks v. Lacks, 41 N.Y.2d 71, 74 (1976), which is a defense not waived by Defendant, see N.Y. C.P.L.R. § 3211(2). See Security Pacific Nat'l Bank v. Evans, 31 A.D.3d 278 (1st Dep't 2006) (stating that the doctrine of standing is an element of the larger question of justiciability and is designed to ensure that the party seeking relief has a sufficiently cognizable stake in the outcome so as to present the court with a dispute that is capable of judicial resolution).
- ☒ The affidavit/s submitted by Plaintiff to introduce the evidence in support of its claim is/are inadmissible hearsay.
- ☒ The documentation provided does not meet the business records exception to the hearsay rule and they are not authenticated by an affidavit from the appropriate party. The court should not consider them, and summary judgment should be denied.
- ☒ Pursuant to N.Y. C.P.L.R. § 4518(a) a sponsoring witness must 1) provide that the record was made in the regular course of business; 2) it was the regular course of business to make it; and 3) it was made contemporaneously with the events it records. The mere recitation of this standard does not render the documents Plaintiff seeks to admit as sufficient under the business records exception to the hearsay rule.

ALL STATEMENTS MADE BY MR. TOM VIGIL ARE BASED UPON INFORMATION AND DOCUMENTS PROVIDED BY GE MONEY BANK. THUS MR. VIGIL COULD NOT HAVE PERSONAL KNOWLEDGE OF THE INFORMATION IN THE DOCUMENTS. MOREOVER, THE CERTIFICATE OF CONFORMITY INTRODUCING MR. VIGIL'S AFFIDAVIT RELATES TO ANOTHER CASE, CACH, LLC v. BETH FRANK, CV-073388-10/BX.

☒ The fact that Plaintiff obtained the records from GE MONEY BANK and then retained them is insignificant and an insufficient basis for the introduction into evidence. Palisades Collection, LLC v. Gonzalez, 809 N.Y.S.2d 482, 2005 WL 3372971 \*2 (N.Y. Civ. Ct. 2005). See also N.Y. C.P.L.R. § 3212(b).

☒ Plaintiff has failed to set forth admissible evidence establishing a prima facie claim that entitles it to collect on the alleged debt owed by Defendant.

☒ Even assuming Plaintiff's proffered evidence meets threshold requirements for admissibility, Plaintiff has not provided sufficient evidence supporting its apparent claims for Account Stated and/or Breach of Contract. See Citibank v. Martin, 807 N.Y.S.2d 284 (N.Y. Civ. Ct. 2005).

☒ "It is well settled that the essential elements of a cause of action to recover damages for breach of contract are: the existence of a contract, the plaintiff's performance under the contract, the defendant's breach of that contract, and resulting damages." J.P. Morgan Chase Bank, N.A. v. Rabel, 27 Misc.3d 656, 658 (N.Y. Civ. Ct. 2010) citing J.P. Morgan Chase Bank, N.A. v. J.H. Elec. of New York, Inc., 69 A.D.3d 802, 803 (2d Dep't 2010).

BOILERPLATE CONTRACT, RATHER THAN AN  
THERE IS NO ORIGINAL CONTRACT; THE  
BOILERPLATE AGREEMENT IS FROM 2006 AND  
DEFENDANT DID NOT HAVE AN ACCOUNT WITH  
GE MONEY IN 2006. THERE ARE DISCREPANCIES  
IN FEES ON BOILERPLATE AND FEES ON THE  
STATEMENTS. APR LISTED ON AGREEMENT IS  
NOT THE SAME AS ON APR ON THE STATEMENTS



☐ Plaintiff must prove for its account stated claim that 1) the account was presented; 2) by mutual agreement it was accepted as correct; and 3) the debtor promised to pay the account stated. Bank of New York-Delaware v. Santarelli, 491 N.Y.S.2d 980, 981 (Civ. Ct. Greene Co. 1985). New York courts treat the account stated claim as an accounting requiring an independent basis for liability and as merely establishing the amount of debt. Citibank v. Martin, 807 N.Y.S. at 291. An account stated claim can determine only the amount of debt it cannot create liability where none exists “as well as prove any agreement to pay any interest appearing on the account.” Id. (emphasis added). More importantly, New York law states, in reference to the unauthorized or improper use of credit and debit cards, that: “No agreement between the issuer and holder shall contain any provision that a statement sent by the issuer to the holder shall be deemed correct unless objected to within a specified period of time. Any such provision is against public policy and shall be of no force or effect.” N.Y. Gen. Bus. Law § 517 (2011).

☐ Genuine triable issues of material fact exist that cannot be resolved at summary judgment. N.Y. C.P.L.R. § 3212(b). “[T]he remedy of summary judgment is a drastic one, which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable, since it serves to deprive a party of his [or her] day in court. Relief should be granted only where no genuine, triable issue of fact exists.” Chemical Bank v. West 95th St. Dev. Corp., 161 A.D.2d 218, 219 (1st Dep’t 1990).

DEFENDANT MAINTAINS THAT SHE HAS PAID IN FULL, OVER \$14,000 AND DEFENDANT HAS PROVIDED PLAINTIFF WITH DOCUMENTATION TO THIS EFFECT PROVING PAYMENTS MADE.

CONTRACT CONTAINS FEES THAT DO NOT CORRESPOND TO FEES IN THE STATEMENTS. THESE DOCUMENTS CONTRADICT EACH OTHER.

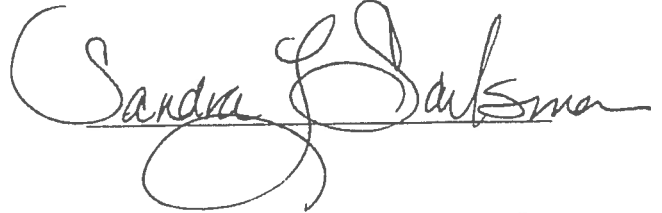
☒ Last, in addition to the aforementioned reasons Plaintiff's motion should be denied because

The Certificate of Conformity dated May 5, 2010, by Brett William Rouleau introducing the Affidavit of Sale dated May 5, 2010, See Pl.'s Ex. E, relates to "the acknowledgement or proof of deeds of real property to be recorded thereinafter" and not the sale of a credit card account. The Certificate of Conformity is insufficient on its face.

4. The following cases support my position: J.P. Morgan Chase Bank, N.A. v. Rabel, 27 Misc.3d 656 (N.Y. Civ. Ct. 2010); J&L Am. Enters., Ltd. v. DSA Direct, LLC, 814 N.Y.S. 2d 890, 890 (Sup. Ct. N.Y. Co. 2006); MBNA America Bank, N.A. v. Nelson, 2007 NY Slip Op 51200U, 24 (Civ. Ct. Richmond Co. 2007); Kent v. 534 E. 11th St., 80 A.D.3d 106 (1st Dep't 2010) (stating that even when existence of agreement is undisputed, the court must be able to determine what terms of the agreement are before it can conclude there has been a breach); Palisades Collection Co. v. Velasquez, 910 N.Y.S.2d 406 (1st Dep't 2010); Palisades Collection, LLC v. Gonzalez, 809 N.Y.S.2d 482, 482 (Civ. Ct. N.Y. County 2005); Chemical Bank v. West 95th St. Dev. Corp., 161 A.D.2d 218 (1st Dep't 1990).

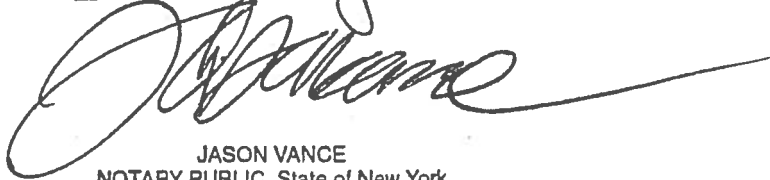
I swear upon penalty of perjury that the statements made above are true to the best of my knowledge, information, and belief.

WHEREFORE, I respectfully request that Plaintiff's motion for summary judgment be denied.



Sworn to before me this

9<sup>th</sup> day of August, 2011.



JASON VANCE  
NOTARY PUBLIC, State of New York  
No. 04VA6161023  
Qualified in Bronx County  
Commission Expires Feb. 8, 2015

# **EXHIBIT K**

**CIVIL COURT OF THE CITY OF NEW YORK  
COUNTY OF BRONX - PART 35C**

**Present:** Honorable Ben R. Barbato, A.J.S.C.

CACH, LLC,

Plaintiff,

-against-

SANDRA SAILSMAN,

Defendant.

**DECISION/ORDER**

Index No.: 2235/11

The following papers numbered 1 to 5 read on this motion for summary judgment noticed and submitted on the Part 35C Motion Calendar of August 26, 2011.

<u>Papers Submitted</u>	<u>Numbered</u>
Notice of Motion, Affirmation and Exhibits	1, 2, 3
Affidavit in Opposition	4
Reply Affirmation	5

Upon the foregoing cited papers, Plaintiff CACH, LLC moves for an Order pursuant to CPLR §3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant SANDRA SAILSMAN.

This action is a breach of contract action brought by the Plaintiff on January 7, 2011. Plaintiff alleges that Defendant opened and maintained a credit card account with Plaintiff's predecessor, that monthly statements were mailed to the Defendant, that Defendant failed to make the required payments and that there is a balance due and owing to Plaintiff, now the current owner. Plaintiff argues that it is entitled to summary judgment against Defendant in the amount of \$1,916.47, together with statutory interest from July 21, 2009 and costs of this action under the doctrine of account stated.

In opposition, the Defendant alleges that Plaintiff has not established that it has standing to bring this claim, that the affidavit submitted by the Plaintiff is inadmissible hearsay and that it

has failed to prove a *prima facie* claim that entitles it to collect on the alleged debt owed by Defendant. In addition, Defendant argues that it has paid in full over \$14,000 and that she has provided Plaintiff with documentation proving that payments were made. Defendant also states that the contract contains fees that do not correspond to fees in the statements, that these documents contradict each other.

“[T]he remedy of summary judgment is a drastic one, which should not be granted where there is any doubt as to the existence of a triable issue or where the issue is even arguable, since it serves to deprive a party of his [or her] day in court. Relief should be granted only where no genuine, triable issue of fact exists.” *Chemical Bank v. West 95<sup>th</sup> St. Dev. Corp.*, 161 A.D.2d 218 (1<sup>st</sup> Dept. 1990). With respect to an account stated, the mere rendering of an account does not make it a stated one, but where an account is rendered showing a balance, the party receiving it must, within a reasonable time, examine it and object, if he disputes its correctness. See *Peterson v. IBJ Schroder Bank & Trust Co.*, 172 A.D.2d 165 (1<sup>st</sup> Dept. 1991). If he omits to do so, he will be deemed by his silence to have acquiesced, and will be bound by it as an account stated, unless fraud, mistake or other equitable considerations are shown. Whether the parties' conduct evinces a mutual intent to be bound by a purported agreement and whether in an action based on an alleged account stated, objection is made within a reasonable time after receipt of the account are questions of fact that need to be submitted to the jury. See *Bowne of New York, Inc. v. International 800 Telecom Corp.*, 178 A.D.2d 138 (1<sup>st</sup> Dept. 1991).

Courts have indicated that absent fraud, mistake, or other invalidating causes or equitable considerations that would make recognition and enforcement of the agreement inappropriate, an account stated, having been agreed to by both the debtor and the creditor, is to be treated as



conclusive. See 29 Williston on Contracts § 73:61 (4th ed.) Nevertheless, an account stated is open to attack on those bases available for challenging many other contracts. Thus, it may generally be shown that the parties never agreed to an account stated; or that if the account was in fact agreed upon or "stated" it was nevertheless not intended to include the particular claim as to which a question has now arisen; or that the account stated was induced by fraud; or that it was entered into as a result of the kind of a material mistake that will give rise to relief in equity. (*Id.*)

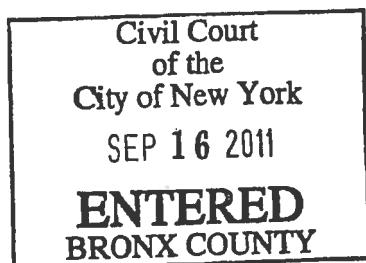
The Court has reviewed the file and all evidence submitted. Based upon that review, the Court finds that the strict standards for the granting of summary motion have not been met and that the Defendant is entitled to her day in court. The Court notes that this action is on the trial calendar for September 22, 2011.

Accordingly it is

**ORDERED**, that Plaintiff CACH, LLC's motion for an Order pursuant to CPLR §3212 directing the entry of Summary Judgment in favor of the Plaintiff and against the Defendant SANDRA SAILSMAN is **Denied**.

The above constitutes the Decision and Order of this Court.

Dated: August 30, 2011



  
Hon. Ben R. Barbato, A.J.S.C.